

CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov



CITY OF
HAYWARD
HEART OF THE BAY

Agenda

Tuesday, March 1, 2016

7:00 PM

Council Chambers

City Council

Mayor Barbara Halliday
Mayor Pro Tempore Al Mendall
Council Member Francisco Zermeño
Council Member Marvin Peixoto
Council Member Greg Jones
Council Member Sara Lamnin
Council Member Elisa Márquez

CITY COUNCIL MEETING**CALL TO ORDER Pledge of Allegiance: Council Member Jones****ROLL CALL****CLOSED SESSION ANNOUNCEMENT****PRESENTATION**

Presentation of the 2015 MMANC Wes McClure Award

PUBLIC COMMENTS

The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda or Work Session or Information Items. The Council welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Council is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.

ACTION ITEMS

The Council will permit comment as each item is called for the Consent Calendar, Public Hearings, and Legislative Business. In the case of the Consent Calendar, a specific item will need to be pulled by a Council Member in order for the Council to discuss the item or to permit public comment on the item. Please notify the City Clerk any time before the Consent Calendar is voted on by Council if you wish to speak on a Consent Item.

CONSENT

1. [MIN 16-015](#) Approval of the Minutes of the City Council Meeting on February 16, 2016

Attachments: [Attachment I Draft Minutes 02/16/16](#)

2. [CONS 16-077](#) Adoption of Resolution Authorizing the City Manager to Negotiate and Execute an Agreement with National Security Industries to Provide Unarmed Security Services at City Hall, Cinema Place, and Hayward Executive Airport

Attachments: [Attachment I Resolution to Execute NSI Contract](#)
[Attachment II NSI Scope of Services](#)

3. [CONS 16-111](#) Water Pollution Control Facility Digester Improvement Project:
Approval of Plans and Specifications, and Call for Bids

Attachments: [Attachment I Resolution](#)

4. [PH 16-012](#) Public hearing to consider formation of the Hayward Geologic
Hazard Abatement District (GHAD) related to the approved La
Vista Development, and appointment of the Hayward GHAD
Board of Directors (Report from Development Services
Director Rizk)

Attachments: [Attachment I Hayward GHAD Formation Resolution](#)
[Attachment II Signed Petion for formation of Hayward GHAD](#)
[Exhibit A La Vista Plat](#)
[Exhibit B Draft GHAD Legal Description](#)
[Exhibit C La Vista GHAD draft Plan Of Control](#)
[Attachment III Resolution 16-016](#)
[Attachment IV Public Notice for formation of the GHAD](#)
[Attachment V GHAD handout](#)
[Attachment VI Resolution 15-224](#)

PUBLIC HEARING

5. [PH 16-016](#) Amendment to the La Vista Project Development Agreement
requiring adoption of a Resolution and Introduction of an
Ordinance to Extend its Term for Five Years and Update the
Project Schedule - The Project is Located at 28816 Mission
Boulevard in eastern Hayward (Report from Development
Services Director Rizk)

Attachments: [Attachment I Draft Resolution](#)
[Attachment II Draft Ordinance](#)
[Attachment III Letter from Jim Summers dated 2/3/16](#)

LEGISLATIVE BUSINESS

6. [LB 16-022](#) Adoption of a Resolution Placing Renewal of the Utility User Tax (UUT) on the June 2016 Ballot (Report from Assistant City Manager McAdoo)

Attachments: [Attachment I Resolution](#)
[Exhibit A to Attachment I](#)

CITY MANAGER'S COMMENTS

An oral report from the City Manager on upcoming activities, events, or other items of general interest to Council and the Public.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Oral reports from Council Members on their activities, referrals to staff, and suggestions for future agenda items.

ADJOURNMENT

NEXT MEETING – Tuesday, March 15, 2016, 7:00 PM

PUBLIC COMMENT RULES

The Mayor may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens or organization. Speakers will be asked for their name before speaking and are expected to honor the allotted time. Speaker Cards are available from the City Clerk at the meeting.

PLEASE TAKE NOTICE

That if you file a lawsuit challenging any final decision on any public hearing or legislative business item listed in this agenda, the issues in the lawsuit may be limited to the issues that were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing.

PLEASE TAKE FURTHER NOTICE

That the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.

****Materials related to an item on the agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, City Hall, 777 B Street, 4th Floor, Hayward, during normal business hours. An online version of this agenda and staff reports are available on the City's website. Written comments submitted to the Council in connection with agenda items will be posted on the City's website. All Council Meetings are broadcast simultaneously on the website and on Cable Channel 15, KHRT.****

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400 or TDD (510) 247-3340.



CITY OF HAYWARD

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777 B Street
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Staff Report

File #: MIN 16-015

Attached is a copy of the Draft Minutes of the City Council Meeting on February 16, 2016.



MINUTES OF THE CITY COUNCIL MEETING OF THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, February 16, 2016, 7:00 p.m.

The City Council meeting was called to order by Mayor Halliday at 7:00 p.m., followed by the Pledge of Allegiance led by Council Member Zermeño.

ROLL CALL

Present: COUNCIL MEMBERS Zermeño, Mendall, Jones, Peixoto, Lamnin, Márquez
MAYOR Halliday
Absent: None

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño inquired about the Maple and Main project and an Environmental Impact Report.

Council Member Peixoto spoke about the real estate transfer tax in other Alameda County cities and provided findings of the analysis to staff.

Council Member Márquez noted she had met with Eden Housing, Inc., about housing rehabilitation projects.

CLOSED SESSION ANNOUNCEMENT

City Attorney Lawson announced that the Council convened in closed session concerning four items: 1) Public employment pursuant to Government Code 54957 regarding the City Attorney; 2) Conference with legal counsel pursuant to Government Code 54956.9 regarding Warner v. City of Hayward, U.S.D.C., N.D. of CA, No. CV-15-01402-LB; 3) Conference with legal counsel pursuant to Government Code 54956.9 regarding two anticipated litigation cases; and 4) Conference with legal counsel pursuant to Government Code 54956.9 regarding S.E.I.U., Local 1021/City of Hayward, P.E.R.B., Case Nos. SF-CE-1075-M, SF-CE-1117-M, SF-CE-1118-M, SF-CE-1174-M, SF-CO-320-M, SF-CE-321-M; and there was no reportable action on Items 2, 3, and 4. Mayor Halliday noted that there was no reportable action on Item No. 1.

PRESENTATIONS

Utilities and Environmental Services Director Ameri announced that the City's Water Pollution Control Facility (WPCF) had been selected as the California Water Environmental Association - San Francisco Bay Section Plant of the Year for 2015 and added that the WPCF was currently one of the three plants to be considered for the Statewide Plant of the Year award, which would be decided in April 2016. WPCF Manager Ray Bausch provided more information about the plant, introduced WPCF staff, and presented a video. Mayor Halliday congratulated staff from the WPCF.

Mayor Halliday read a proclamation proclaiming February 2016 as Teen Dating Violence Awareness and Prevention Month. Safe Alternatives to Violent Environments (SAVE) Director, Tina Fernandez, retired Fremont Chief of Police Craig Steckler, and dynamic teens, accepted the proclamation on behalf of SAVE.

PUBLIC COMMENTS

Mr. Jim Drake, Hayward resident, spoke about City vehicles driven by staff from the Fire Department and the quality of water.

The following individuals spoke about the Maple and Main project and touched on the following: requested a work session to address viability and green features; requested that an Environmental Impact Report (EIR) be conducted for the project; expressed concern about the increase in traffic that the project would generate; opposed the height and volume of the project and similar large scale projects; favored attracting economic development to the site; shared concern with impact issues to the neighborhood such as parking and quality of life; favored incorporating retail and business use at the proposed site; and relayed concern with the geological survey.

Mr. Benjamin Goulart, Main Street resident

Mr. Abner Morgan, Main Street resident

Mr. Jess Glenn, Main Street resident

Mr. Michael Urioste, Prospect Street resident

Ms. Kathleen Wills, Prospect Street resident

Mr. Croft Jervis, Prospect Street resident

Mr. Frank Goulart, Main Street resident

Mr. Per Bothner, Prospect Street resident

Ms. Blaine Ricketts, McKeever Avenue resident

Mr. Robert Benn, Main Street resident

Mr. Kevin Benn, Main Street resident

Ms. Sally Baxter, McKeever Avenue resident

Mr. Thomas Hartmann, Hayward resident, requested parking for motorcycles on B Street.

Ms. Wynn Grcich, Hayward resident, noted she had taken nomination papers for a City Council seat and spoke about rent control, minimum wage, the wastewater treatment, and the SEIU PERB case.

Ms. Elena Garcia, Hayward resident, reported there were gunshots fired into her home and requested help in recovering her quality of life. She noted she lives by the Shar-Ade Cocktail Lounge.

Council Member Márquez announced that AC Transit would be holding a Contractor Roundtable on February 29, 2016 at City Hall.



MINUTES OF THE CITY COUNCIL MEETING OF THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, February 16, 2016, 7:00 p.m.

CONSENT

1. Approval of the Minutes of the Special Joint City Council/Redevelopment Successor Agency Meeting on January 26, 2016 MIN 16-011

It was moved by Council/RSA Member Zermeño, seconded by Council/RSA Member Márquez, and carried unanimously, to approve the minutes of the Special Joint City Council/Redevelopment Successor Agency Meeting on January 26, 2016.

2. Approval of the Minutes of the City Council Meeting on February 2, 2016 MIN 16-012

It was moved by Council Member Zermeño, seconded by Council Member Márquez, and carried unanimously, to approve the minutes of the City Council Meeting on February 2, 2016.

3. Approval of Hayward FBO, LLC Fifth Amendment to Lease Agreement CONS 16-068

Staff report submitted by Airport Manager McNeeley, dated February 16, 2016, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Márquez, and carried unanimously, to adopt the following:

Resolution 16-020, "Resolution Authorizing the City Manager to Negotiate and Execute the Fifth Amendment to the Commercial Aviation Site Lease Between the City of Hayward and Hayward FBO LLC"

4. Water Pollution Control Facility (WPCF) Headworks Rehabilitation Project: Authorization for the City Manager to Execute a Professional Services Agreement for Engineering Services CONS 16-069

Staff report submitted by Senior Utilities Engineer England, dated February 16, 2016, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Márquez, and carried unanimously, to adopt the following:

Resolution 16-021, "Resolution Authorizing the City Manager to Negotiate and Execute a Professional Services Agreement with Carollo Engineers for Design and Construction Administration Services for the Headworks Rehabilitation Project at Water Pollution Control Facility"

5. Resolution in Support of AB 1584 (Brown & Thurmond): Public Social Services: Supplemental Security Income & State Supplementary Payments CONS 16-076

Staff report submitted by Management Fellow James, dated February 16, 2016, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Márquez, and carried unanimously, to adopt the following:

Resolution 16-022, "Resolution Supporting AB 1584 (Brown & Thurmond) Reinstating Cost of Living Adjustments to State Supplementary Payments and Increasing Benefits Annually"

6. Professional Services Agreements with Consultants to Provide On-Call Public Works Construction Inspection Services CONS 16-078

Staff report submitted by Assistant City Engineer Owusu, dated February 16, 2016, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Márquez, and carried unanimously, to adopt the following:

Resolution 16-023, "Resolution Authorizing the City Manager to Negotiate and Execute Agreements for Outside Construction Inspection Services"

LEGISLATIVE BUSINESS

7. Council Consideration of the Initiative for a City Charter Amendment and Municipal Code Amendment to Change the General Municipal Election from June to November LB 16-015

Staff report submitted by City Manager David, dated February 16, 2016, was filed.

City Manager David provided a synopsis of the staff report.

Mayor Halliday opened the public hearing at 8:14 p.m.

The following individuals spoke in opposition of the ballot measure that proposed changing municipal elections from June to November and touched on the following points: Hayward voters had voted on changing the election from April to November in 1994, the ballot initiative was an effort led by SEIU Local 1021, local measures would get lost in November and would not receive the same level of scrutiny. The Council was urged to take no position on the ballot measure.



MINUTES OF THE CITY COUNCIL MEETING OF THE CITY OF HAYWARD
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Tuesday, February 16, 2016, 7:00 p.m.

Mr. Kevin Dowling, Hayward resident
Mr. Frank Goulart, Hayward resident

The following individuals spoke in support of the ballot measure that proposed changing municipal elections from June to November and touched on the following points: there was support from registered voters, it would increase voter turnout, would reduce election costs, and savings could be used to offset budget reductions. The Council was urged to take no position on the ballot measure.

Mr. Gabriel Haaland, SEIU Local 1021 Political Coordinator
Ms. Rachel Richman, IFPTE Local 21 Political and Policy Director
Ms. Cheryl Penick, Hayward resident and IFPTE Local 21 Chapter President
Mr. Pete Albert, SEIU Local 1021 Retiree Council Chair

Mayor Halliday closed the public hearing at 8:33 p.m.

Discussion ensued among City Council and City staff regarding the following: the initiative that was placed on the June ballot by petition; taking a position on the ballot measure that proposes to amend the City Charter changing municipal elections from June to November; voter turnout; voter education and engagement; attention to candidates and local issues in June; motivation behind charter amendment; election cost; and Political Action Committee funds.

Council Member Jones offered a motion for the City Council to take a position and submit an argument opposing the amendment to the City Charter and Municipal Code changing the municipal elections from June to November.

Council Member Peixoto seconded the motion.

Council Member Mendall noted that there was no consensus among members of the City Council and therefore supported taking no position as a legislative body.

Council Member Zermeño stated he had personally endorsed the initiative petition and preferred that the Council, as a legislative body, take no position.

Council Member Peixoto supported the motion for the City Council to take a position in opposition to the ballot measure.

Mayor Halliday noted that because the City Council was not united in taking a position, she would not support the motion on the floor. Mayor Halliday noted that members of the City Council could individually take a position regarding the June ballot measure.

It was moved by Council Member Jones, seconded by Council Member Peixoto, and failed by the following vote, for the City Council to take a position as a legislative body and submit an argument in opposition to the ballot measure that proposes to amend the City Charter and Municipal Code changing the municipal elections from June to November:

AYES: Council Members Jones, Peixoto
NOES: Council Members Zermeño, Mendall, Lamnin, Márquez
MAYOR Halliday
ABSENT: None
ABSTAINED: None

CITY MANAGER'S COMMENTS

There were no comments.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño announced that the Hayward Rotary Club Foundation was having a fundraiser “Omelet Champagne Brunch” to benefit the Hayward Rotary’s Community Grants Program on February 21, 2016 at Moreau Catholic High School.

ADJOURNMENT

Mayor Halliday adjourned the meeting at 9:15 p.m., in memory of Mr. Danny Montenegro, who passed away on January 18, 2016.

Mr. Danny Montenegro was born in Hayward, grew up in Hayward, attended Mount Eden High School and Chabot College. He was an art director, illustrator, graphic designer, video editor, and art instructor and helped others expand their horizons. Mayor Halliday asked staff to work with his family and find a suitable place to plant a tree in memory of Danny Montenegro.

APPROVED:

Barbara Halliday
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward



CITY OF HAYWARD

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Staff Report

File #: CONS 16-077

DATE: February 16, 2016

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT

Adoption of Resolution Authorizing the City Manager to Negotiate and Execute an Agreement with National Security Industries to Provide Unarmed Security Services at City Hall, Cinema Place, and Hayward Executive Airport

RECOMMENDATION

That the Council adopts the attached resolution (Attachment I) authorizing the City Manager to negotiate and execute an agreement with National Security Industries to provide security services at City Hall, Cinema Place, and the Hayward Executive Airport.

BACKGROUND AND DISCUSSION

Security services are necessary at City Hall, Cinema Place, and Hayward Executive Airport to protect City property and the property of visitors, provide customer service, and monitor access to City facilities. The City has contracted with ABC Security Services for the provision of unarmed security guards at these facilities since 2009.

In October, staff released a Request for Proposal for Unarmed Security Services. In total, the City received sixteen responses. The Airport Operations Supervisor, Facilities Manager, Maintenance Services Facilities Analyst, and Redevelopment Successor Agency Analyst reviewed, scored, and ranked the proposals. The firms submitting the top three proposals were invited to interview with the review panel at City Hall. The panelists scored and ranked the top three firms, and unanimously selected National Security Industries as the successful bidder. Following this, the City officially notified National Security Industries of their successful proposal.

National Security Industries met all specifications of the RFP, offered competitive rates, has significant experience with both providing security at aviation facilities and providing customer service to people from all walks of life, and performed well in the interview. The firm was determined to best meet the needs of the City by all panelists. National Security Industries has agreed to comply with the City's Living Wage Ordinance and Nuclear Non-Involvement Affirmation.

FISCAL IMPACT

Maintaining current security coverage through National Security Industries will cost the City of Hayward between \$19.17 and \$20.47 an hour for guards paid the wage stipulated by the Living Wage Ordinance. The City will be retaining one current guard at a slightly higher rate. The total annual cost of security services to the City at the current rate will be approximately \$255,000. The current contract with ABC Security costs approximately \$300,000 annually, attributable to changes in the security services market since the City last went out for bids.

Wage increases stipulated by the Living Wage Ordinance will likely increase the cost of services over the life of the agreement. Funds will be drawn from the Maintenance Services Department budget and the property owner of Cinema Place who shares the cost of security services for the Cinema Place parking garage.

The term of the initial contract with National Security Industries is three years, with the option for two one-year continuances.

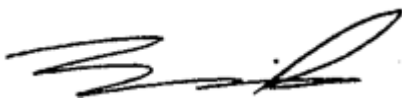
NEXT STEPS

If the City Council authorizes the City Manager to execute this contract, staff will prepare and execute the necessary documents. National Security Industries will begin providing security services following execution of the contract.

Prepared by: Laurel James, Management Fellow

Recommended by: Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

Attachment I
Attachment II

Resolution
Scope of Services

HAYWARD CITY COUNCIL

RESOLUTION NO. 16-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH NATIONAL SECURITY INDUSTRIES TO PROVIDE UNARMED SECURITY SERVICES

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to negotiate and execute an agreement with National Security Industries for the provision of unarmed security services at City Hall, Cinema Place, and Hayward Executive Airport.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2016

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

1. SCOPE OF SERVICES

NSI agrees to perform Security Guard Services. Provided that such service conforms with the standards for performance set forth in this Agreement and be consistent with the customs and practices of similar private security agencies in the State of California, and be in accordance with all laws, rules and/or regulations applicable to the performance of such service.

The City requires security services for the stated shifts at the following locations:

Location	Address	Hours	Coverage
Hayward City Hall	777 B St.	7:00am – 3:00pm (M-F) 3:00pm – 11:00pm (M-F)	1 Guard 1 Guard
Hayward Executive Airport	20301 Skywest Dr.	12:00am – 8:00am (M-F) 4:00pm – 12:00am (Sa, Su) 12:00am – 8:00am (Sa, Su)	1 Guard 1 Guard 1 Guard
Cinema Place	22631 Foothill Blvd.	6:00pm – 2:00am (M-F) 12:00pm – 7:00pm (Sa, Su) 7:00pm – 2:00am (Sa, Su)	1 Guard 1 Guard 1 Guard

These hours are not guaranteed to the contractor, and no payment will be earned or due for hours not performed. Required services may increase or decrease during the term of the contract as dictated by the needs of the City. The Contractor shall furnish a sufficient number of fully qualified guards and adequate supervision to secure the above facilities, and perform the duties listed below.

The City will not pay overtime or hours deviating from the above without authorization by the Facilities Manager or Airport Operations Supervisor.

a. On-Call Services

The contractor must be able to provide additional on-call service on occasion, including but not limited to special events held at City facilities.

b. Description of Duties

Assignments will normally be single duty guard stations. The main functions of the guard positions are:

1. Access Control

- a. Control access to City buildings
- b. Log incoming and outgoing individuals.
- c. Log all aircraft activity (takeoff and landing) between 9:00pm and 6:00am. (Airport only)



NATIONAL SECURITY INDUSTRIES
 24 Hour Professional Security Guard Protection
 940 PARK AVE
 San Jose, CA 95126

www.nationalsecurityind.com
 E-Mail: info@nationalsecurityind.com
 Phone: (408) 371-6505
 Fax: (408) 371-6506

- d. Account for keys to City buildings, equipment, or vehicles at all times. Lost keys allowing access to City buildings and offices will require a re-keying of the entire building at contractor's expense and disciplinary action.
2. Patrol (Airport only)
 - a. Regularly observe and patrol designated perimeters, areas, structures, and activities of security interest to the Airport.
 - b. Inspect designated areas and buildings outside of normal working hours to determine that they are properly locked, secured, and otherwise in order.
 - c. Never leave facility until properly relieved.
 3. Emergencies
 - a. Respond to protective alarm signals or other indications of suspicious activities.
 - b. Respond as specified in Guard Orders to incidents affecting security of the facility including fires, aircraft accidents, industrial accidents, internal disorders, or other criminal acts, including calling for assistance (911) when necessary.
 - c. Maintain effective liaison with Facilities Manager, FAA, Airport Operations Supervisor and Fire Department or the City Police Department. In other events, notify proper City department for fire, threatening equipment failure or medical emergency.
 4. Administrative
 - a. Maintain a daily log of all security activity and provide a detailed daily written report of any matters or occurrences relating to the security of the facility.
 - b. Complete a written report for each incident of emergency, injury, security disruption, or law violation to be furnished to the Facilities Manager within 24 hours of incident.
 - c. Operate two-way radio unit or cell phone/radio when required.
 - d. Perform other security duties and services as requested by the Facilities Manager and Airport Operations Supervisor.
 - e. Report unsafe or non-workable conditions to the Facilities Manager and Airport Operations Supervisor.

Additionally, assigned guard personnel are required to arrive at work well groomed, in a professional manner, in an appropriate and complete uniform of the contracted company, and in possession of all equipment necessary to accomplish assigned duties, including equipment capable of running and accessing the Silvertrac security reporting system.

Guards are charged with following the instructions and rules laid out in the City of Hayward or Hayward Executive Airport Guard Handbook, which shall be provided to all personnel upon their assignment to the City.



c. Supervision & Dispatch

The Contractor shall furnish adequate supervision on a daily basis for all personnel assigned to the City. Supervisors shall be available to the Facilities Manager and Airport Operations Supervisor, and conduct on-site inspections of security personnel at least twice a week. Supervisors shall have prior security experience, be knowledgeable and skilled in the operational aspects of the security business, and shall guide and direct on-site personnel.

In addition to supervision, the Contractor must maintain 24/7 receptionist or dispatch service via a staff member available by phone.

d. Equipment & Uniform

The Contractor shall, at no additional cost to the City, be responsible for furnishing guards and supervisory personnel with appropriate uniforms, badges, insignia or rank, incident report forms, and other equipment required to perform the required work including, but not limited to, communication equipment.

Uniforms shall be of a traditional security-style color and design, bearing a patch or other insignia clearly identifying the contractor. The Contractor shall ensure that the color and style of uniform is easily distinguishable from that of the City of Hayward Police Department and any and all law enforcement agencies present at the Airport. Guards must be issued and wear nametags or identification cards with picture.

Security guards shall be unarmed. Guards shall not be issued any lethal equipment, electronic control devices such as stun guns or Tasers, mace/pepper spray, handcuffs, or nightsticks/batons.

e. Vehicle (Airport only)

The Contractor shall provide a vehicle for patrol use by guards assigned to the Hayward Executive Airport. The vehicle must meet all state and local requirements for use on the street, have an amber-colored rotating signal light on its roof, and display a placard identifying the vehicle as belonging to security.

The Contractor shall be responsible for ensuring the vehicle is properly maintained and in good working order at all times.

f. Licenses, Permits, and Screening

The Contractor must be fully licensed, permitted and insured without lapse throughout the duration of the contract. Copies of all licenses, permits, and policies must be furnished to the City of Hayward along with the Contractor's proposal.

Furthermore, Contractors are required to ensure and document that all guards assigned to the City of Hayward are trained, registered, and licensed or permitted as required by the State and local



laws and authorities. Additionally, the Contractor shall ensure that all guards renew their training, registration, and licenses or permits with State and local authorities as required by law in a timely manner. The City may inspect such documentation at any time upon request.

Guards must possess at time of assignment to the City of Hayward a current Guard Registration card, issued by the California Department of Consumer Affairs, Bureau of Security and Investigative Services, which allows them to be employed by a licensed agency for a two-year period. No employer or employee is exempt from this requirement.

g. Personnel Requirements

Guards knowledgeable with the equipment requirements of City of Hayward postings are not to be transferred to a non-City client without the consent of the City. The contractor shall ensure that sufficient personnel are trained for each facility to cover unexpected illnesses, resignations, or vacations of regularly assigned personnel. Contractor must provide a list of all assigned personnel at the start of the contract, and shall provide semi-annually an updated list specifically identifying any personnel that have been added and that have been removed from each site.

The City reserves the right to refuse or reject any person assigned under the contract either with or without cause.

1. *Comprehensive Background Check.* The Contractor will be required to conduct a comprehensive background check for each employee based on factors including, but not limited to: qualifications for assigned tasks, reliability and integrity, and physiological and mental fitness. Additionally, Contractor will certify that all assigned guard personnel have successfully passed a criminal background check. At minimum, personnel are required to pass a California Department of Justice fingerprint check.
2. *Drug Screening.* The Contractor will be required to administer at own expense a drug test on all personnel prior to their assignment at the City.
3. *Education & Experience.* Guards assigned to the City must have at least three (3) months verifiable experience in similar security work, be persons of mature judgment, and be able to think and act quickly in an emergency. Assigned personnel shall possess, at a minimum, either a high school diploma or equivalent.
4. *Physical Requirements.* Guards must be capable of performing duties requiring moderate physical exertion under either normal or emergency conditions. Additionally, guards must meet the following requirements:
 - a. *Vision.* Assigned personnel must possess good distance and close vision in each eye, normal fields of vision and depth perception, and ability to distinguish basic colors.



NATIONAL SECURITY INDUSTRIES
 24 Hour Professional Security Guard Protection
 940 PARK AVE
 San Jose, CA 95126

www.nationalsecurityind.com
 E-Mail: info@nationalsecurityind.com
 Phone: (408) 371-6505
 Fax: (408) 371-6506

- b. *Hearing.* Hearing loss must not exceed 30 decibels in both ears, or 35 decibels in the poorer ear.
5. *Mental Requirements.* Guards must be alert, exercise good judgment, and be capable of implementing instructions and assimilating necessary specialized training.
6. *Training.* All personnel assigned to the City of Hayward shall have completed CPR and first aid training. Contractor shall provide the following training at no additional expense to the City:
- a. *Training of newly assigned guards.* Contractor will be expected to assign new guard personnel to on-site training provided by the City prior to their first shift. Guards are to be paid full wages throughout the training period, without reimbursement to the guard service. With supervision by the Facilities Manager or Airport Operations Supervisor, new guards will be taught specific post duties, including emergency procedures and the operation of the building security alarm system. The required on-site training for each location is as follows:

Site	Hours	Shifts
City Hall	16.0	2 shifts, 8 hours each
Hayward Executive Airport	72.0	9 shifts, 8 hours each

- b. *Airfield driver training course. (Airport only)* Guards assigned to the Hayward Executive Airport must successfully pass an airfield driver training course provided by the airport to remain in their position.
- c. *Training of substitute guards.* Substitute guards shall be taught the post duties of their particular assignments.
- d. *Refresher training.* Refresher training shall be provided upon request of the City, and address any issue brought to the Contractor's attention by the City Facilities Manager or Airport Operations Supervisor. Training shall be designed to ensure that all security guards are proficient at their post duties.
- e. *Health and safety training.* Contractor shall provide safety training as required by the California Department of Industrial Relations and the California Occupational Safety and Health Administration (Cal-OSHA).



7. *California Driver's License. (Airport only)* Each guard or supervisor employed at the Airport must possess a valid California Class C driver's license and clean driving record.
8. *Communication.* Security guards must possess the ability to fluently speak, read, and write in English. Fluency in Spanish is highly desirable.
9. *Turnover.* Excessive turnover (not to exceed 100% in 90 days) of guards will not be tolerated and may be cause for termination of the contract.





CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

Staff Report

File #: CONS 16-111

DATE: March 1, 2016

TO: Mayor and City Council

FROM: Director of Utilities & Environmental Services

SUBJECT

Water Pollution Control Facility Digester Improvement Project: Approval of Plans and Specifications, and Call for Bids

RECOMMENDATION

That Council adopts the attached resolution approving the plans and specifications for the WPCF Digesters Improvement Project and calling for bids to be received on April 5, 2016.

BACKGROUND

The City's WPCF provides wastewater treatment for Hayward's residential and business communities. The facility treats an annual average of twelve million gallons per day (MGD) and meets current requirements for discharge of treated effluent to the deep waters of the San Francisco Bay. The treatment process includes three anaerobic digesters ranging in volume from 0.9 to 1.4 million gallons with one digester constructed in 1952, the second in 1958, and the third in 1976.

The City completed a comprehensive update of the WPCF's Master Plan in October 2014 that included, in part, recommendations to rehabilitate or replace old systems that have reached the end of their useful life. Other process enhancements were also recommended to improve the digester feed system that will result in improved digester gas production.

The first project implemented as a result of the updated Master Plan is to address both the needed improvements and process enhancements to the WPCF's digesters. In January 2013, staff selected and entered into a professional services agreement with West Yost Associates for design and construction management services for the Digester Improvement Project.

DISCUSSION

The 2014 Master Plan identified improvements to the existing digesters that address aged facilities in need of replacement, improvements for enhanced safety and reliability, as well as process enhancements. The Digester Improvement Project includes replacement of existing pressure relief valves, flame arrestors, and sediment traps on all three digesters, and replacement of aged brittle PVC

gas piping on Digesters 1 and 2 with new piping. In addition, new gas flow meters are included to provide better monitoring and control of each digester. Renovations to existing heating and mixing buildings adjacent to each digester include new doors and windows replacing old non-functional doors and windows, demolition and removal of old abandoned equipment to improve access for Operations and Maintenance staff, and improved lighting and ventilation systems. New valve actuators are provided for hard to reach and large diameter valves for improved operability. A new sludge blending tank is provided to serve as a standby for the existing fats, oils, and grease (FOG) tank to allow maintenance on the tank without stopping FOG deliveries to the plant, and to provide the ability to mix and convey uniform digester feed stock to each digester through a new automated feed valve system. The tank will also provide some buffer to allow more flexibility in FOG deliveries to the WPCF. The blending tank and automated digester feed system are expected to improve digester efficiency and gas production. Finally, a new waste gas burner is included to replace the old waste gas burner that has reached the end of its useful life.

These project elements improve safety, replace existing facilities in need of replacement, improve operability and access, provide redundancy to the existing FOG system, and improve digester efficiency. Improved digester efficiency is expected to improve gas production which will also benefit the new cogeneration system.

ECONOMIC IMPACT

Hayward has both a robust industrial area and a firm commitment to protection of the environment and to sustainability. If we allow our WPCF facilities to erode in quality and fail to handle our waste water appropriately, we could jeopardize our reputation as both a quality place to build and operate clean industry and as a place dedicated to and on the cutting edge of environmental protection and sustainability. Therefore, quality maintenance and operation of our WPCF are essential parts of our economic development strategy.

FISCAL IMPACT

The estimated project costs are as follows:

<u>Total Project Cost</u>	Design and Engineering Services	\$ 675,000
	During Construction (Consultant)	
	Design Administration - City Staff	50,000
	Construction Contract (Estimated)	4,825,000
	Inspection and Testing (Estimated)	50,000
	Total	<u>\$5,600,000</u>

The Capital Improvement Program (CIP) includes \$3,335,000 for this project in both the sewer replacement and sewer improvement funds for FY 2015 and FY 2016. The estimate was based on separate projects as follows:

Fund	Project No.	Description	Budget
612	07564	Digester Gas Flare Project	\$ 425,000

612	07565	Digester Piping and Gas Metering Optimization	630,000
612	07566	Digester Sludge Mixing Tank	1,665,000
611	07643	Digester Feed Valve Automation	75,000
611	07658	Heating & Mixing Buildings Improvements	540,000
		Total	<u>\$3,335,000</u>

The current estimated cost is nearly 68% higher than the amount originally included in the CIP. The original CIP budget estimates were based on costs provided in the 2014 Master Plan and are typically order of magnitude type estimates when project definition level is at the planning or conceptual level. Expected accuracy for a planning level estimate typically ranges from 50% below or above the actual cost. The estimate in this case exceeded this range; however, this is not unusual for projects of the level of complexity as the Digester Improvement Project.

Some examples of project elements that were added during design development which were not included in the conceptual estimates include digester gas piping replacements, modifications to the exiting FOG tank to allow it to be used as a fully redundant tank to the new sludge blending tank, new foul air odor treatment systems, and valve automation to improve ability to rotate and cycle mixing pump suction and discharge piping for better mixing to name a few. The above defined cost of \$5,650,000 is based on the engineering consultant's "Estimated Opinion of Probable Cost" prepared at the 100% design completion level and is based on more complete information.

The extent of the funding shortfall will be determined after the construction bids have been received. Staff will request that Council appropriate additional funds from the Wastewater Improvement fund balance at the time of award. Adequate fund balance is available to cover the necessary appropriation.

PUBLIC CONTACT

All work will be within the WPCF plant boundary; therefore no public contact is necessary for this project.

NEXT STEPS

Following Council approval, staff will advertise the project for public bidding. Staff will return to the City Council for award of the construction contract after bids have been received and reviewed. The following schedule has been developed for this project:

Award Construction Contract	April 19, 2016
Notice to Proceed	May 13, 2016
Construction Completion	August, 2017

Prepared by: Suzan England, Senior Utilities Engineer

Recommended by: Alex Ameri, Director of Utilities & Environmental Services

File #: CONS 16-111

Approved by:

A handwritten signature in black ink, appearing to read 'Fran David', with a stylized flourish at the end.

Fran David, City Manager

Attachments:

Attachment I

Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 16-

Introduced by Council Member _____

RESOLUTION APPROVING PLANS AND SPECIFICATIONS FOR THE WATER POLLUTION CONTROL FACILITY DIGESTER IMPROVEMENT PROJECT, PROJECT NO. 07566 AND CALL FOR BIDS

BE IT RESOLVED by the City Council of the City of Hayward as follows:

WHEREAS, those certain plans and specifications for the Water Pollution Control Facility Digester Improvement Project, Project No. 07566, on file in the office of the City Clerk, are hereby adopted as the plans and specifications for the project;

WHEREAS, the City Clerk is hereby directed to cause a notice calling for bids for the required work and material to be made in the form and manner provided by law;

WHEREAS, sealed bids therefor will be received by the City Clerk's office at City Hall, 777 B Street, Hayward, California 94541, up to the hour of 2:00 p.m. on Tuesday, April 05, 2016, and immediately thereafter publicly opened and declared by the City Clerk in Conference Room 4D, City Hall, Hayward, California.

NOW, THEREFORE, BE IT RESOLVED, that the City Council will consider a report on the bids at a regular meeting following the aforesaid opening and declaration of same.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2016

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

Staff Report

File #: PH 16-012

DATE: March 1, 2016

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT

Public hearing to consider formation of the Hayward Geologic Hazard Abatement District (GHAD) related to the approved La Vista Development, and appointment of the Hayward GHAD Board of Directors

RECOMMENDATION

Staff recommends that the City Council conducts a public hearing and determines if more than fifty percent of the owners of real property within the La Vista Development object to the formation of the Hayward GHAD; and, if that proves not to be the case, adopts the attached Resolution (Attachment I) forming the Hayward GHAD and appointing City Council members as the Hayward GHAD Board of Directors.

BACKGROUND

In 2005, the Hayward City Council conditionally approved the 179-unit La Vista Development (Tract 7620), with a condition requiring that a Geologic Hazard Abatement District (GHAD) be formed to address on-site geologic hazards associated with the development. State law authorizes GHADs to be formed to prevent, mitigate, abate, or control geologic hazards. GHADs are typically financed by assessing property owners within their boundaries, subject to the restrictions of Proposition 218.

On June 12, 2008, the City Council approved a Development Agreement with La Vista LP. Section 4.5 of the Development Agreement commits the City to “cooperate with owner and take such additional actions as may be reasonably requested by owner to implement this Agreement, including but not limited to, formation of a Geologic Hazard Abatement District (GHAD) necessary to maintain and, if necessary, repair the lands within Parcel A as shown on the Vesting Tentative Map...”

On November 17, 2015, the City Council approved Resolution No. 15-224 (Attachment VI) committing the City of Hayward to be subject to the GHAD law and directed the City Clerk to forward a copy of the resolution to the State Controller, which was done.

On January 26, 2016, a [work session on GHADs <https://hayward.legistar.com/LegislationDetail.aspx?ID=2555222&GUID=6795B255-EA43-4E96-9AAB-20AD166E3D94>](https://hayward.legistar.com/LegislationDetail.aspx?ID=2555222&GUID=6795B255-EA43-4E96-9AAB-20AD166E3D94) was held before the City Council, during which staff and consultant Eric Harwell of Engeo Incorporated, provided an overview of GHADs and answered questions from the City Council. Attachment V, which was attached to the staff report for that work session, provides an overview of GHADs.

On February 2, 2016, in response to a petition (Attachment II) filed by the owner of the La Vista development, in accordance with Public Resources Code Sections 26552 and 26554, the Hayward City Council approved Resolution No. 16-016 (Attachment III), which:

1. Approved the scheduling of a Public Hearing for March 1, 2016, to consider formation of the Hayward GHAD.
2. Determined that the health, safety and welfare of the public requires inclusion of the La Vista development territory into a GHAD.
3. Directed the City Clerk to send a written notice of the March 1, 2016 Public Hearing, including a copy of the draft Plan of Control for the La Vista development, to the owner of all property within the La Vista development, the Hayward Area Recreation and Park District (HARD), and to the owners of all properties adjacent to the La Vista Development.

On February 10, 2016, the City Clerk mailed written notice of the March 1, 2016 Public Hearing (Attachment IV), as directed by the City Council.

DISCUSSION

Public Hearing - State law requires that a public hearing be held to determine if more than 50% of the property owners within the boundaries of a proposed GHAD formally protest, in writing, the inclusion of their property into a GHAD (Public Resources Code Section 26564). This process is known as the "majority protest" process as outlined in Proposition 218. If more than 50% of the affected property owners file a written protest, the proceedings must be terminated (Public Resources Code Section 26566). Again, there is only one property owner of the property within the boundaries of the proposed GHAD, and that owner filed a petition requesting that a GHAD be formed.

Following any public testimony received by the City Council on March 1, and assuming that no majority protest is made, the City Council may close the public hearing and deliberate on whether or not to create the Hayward GHAD. By law, the City Council must determine within sixty days of the close of the public hearing whether to order formation of the Hayward GHAD (Public Resources Code 26567).

Appointment of the Hayward GHAD Board of Directors - If the City Council decides to create the Hayward GHAD, it must then appoint the Hayward GHAD Board of Directors.

According to GHAD law, the City Council members may act as the Board of Directors of the Hayward GHAD or, alternatively, the City Council may appoint five property owners who own property within the GHAD, to serve as the GHAD Board of Directors (Public Resources Code Sections 26567 and 26583). Because there is only one property owner, the Council would be expected to appoint itself as the GHAD Board of Directors if the GHAD is formed. Having a jurisdiction's legislative body members serve as the

GHAD Board of Directors is the most common arrangement in previously created GHADs in California.

ECONOMIC AND FISCAL IMPACTS

Formation of the Hayward GHAD will not, by itself, have a direct fiscal or economic impact. However, formation of the Hayward GHAD will allow future consideration of an assessment, to be paid only by buyers of property in the La Vista Development, which will ensure that a non-City funding source is established in perpetuity to fund the maintenance of nearby/adjacent geologic hazards, including slopes and related drainage systems.

PUBLIC CONTACT

Notice of this public hearing was sent to La Vista, LP, to HARD staff, and to adjacent property owners. No responses to such notices have been received.

NEXT STEPS

If the GHAD is formed and the GHAD Board of Directors is appointed, at future meetings, the GHAD Board will need to:

1. Decide how the Hayward GHAD is to be administered; including recruitment/selection of a GHAD Clerk (required by law), GHAD Treasurer (required by law), and possible appointment by the GHAD Board of Directors of other Officers of the District such as GHAD Manager, GHAD legal counsel and GHAD maintenance entity (these positions are not required by law and may be staffed with either current City employees and/or hired consultants);
2. Adopt a resolution formally accepting the Final Plan of Control for the La Vista development once it is completed;
3. Approve an Intent to Order an Assessment for the GHAD parcels;
4. Approve the Engineer's Report and Notice to Order an Assessment of the parcels in the Hayward GHAD;
5. Hold a public hearing to complete the Proposition 218 election process for adopting a new GHAD assessment for the GHAD parcels; and
6. Approve a yearly budget for the Hayward GHAD (after the GHAD accepts monitoring, maintenance and ownership responsibilities).

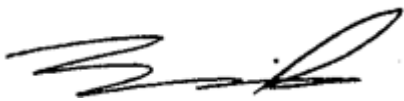
Prepared by: Peter Rei, PE, PLS Contract Development Review Engineer

Reviewed by: Sara Buizer, AICP, Planning Manager

Recommended by: David Rizk, Development Services Director

File #: PH 16-012

Approved by:



Fran David, City Manager

Attachments:

- Attachment I Resolution to form Hayward GHAD and Appoint Council Members as the Hayward GHAD Board of Directors
- Attachment II Petition from La Vista developer to form Hayward GHAD
 - Exhibit A - GHAD Plat
 - Exhibit B - Draft GHAD Legal Description
 - Exhibit C - Draft GHAD Plan of Control
- Attachment III Resolution No. 16-016
- Attachment IV Notice of March 1, 2016 Public Hearing
- Attachment V Geologic Hazard Abatement Districts handout
- Attachment VI Resolution No. 15-224

HAYWARD CITY COUNCIL
RESOLUTION NO.16-_____

Introduced by Council Member _____

RESOLUTION APPROVING THE CREATION OF THE HAYWARD GEOLOGIC
HAZARD ABATEMENT DISTRICT (GHAD) AND APPOINTING THE CITY
COUNCIL OF THE CITY OF HAYWARD AS THE GHAD BOARD OF DIRECTORS

WHEREAS, on November 17, 2015 the Hayward City Council adopted Resolution 15-224 declaring that the City is subject to the provisions of the GHAD Law and directed the City Clerk to forward a copy of this resolution to the State Controller; and

WHEREAS, the City has conditioned the La Vista development to be included within a GHAD and which shall be the territory incorporated into the Hayward GHAD to be further defined by the plat and legal description within the Plan of Control to be adopted by the GHAD Board ; and

WHEREAS, on February 2, 2016 the City considered and adopted Resolution No. 16-016 accepting the Resolution for Formation of the Hayward GHAD and set a hearing on the formation for March 1, 2016 at 7:00pm at the Hayward City Hall located at 777 B Street, Hayward, CA 94541; and

WHEREAS, notice of the Public Hearing on the formation of the Hayward GHAD was given in accordance with the provisions of Public Resources Code sections 16558 and 26561 through 26563; and

WHEREAS, a Public Hearing before the City Council on the formation of the Hayward GHAD was held on March 1, 2016 at 7:00 p.m.; and

WHEREAS, prior to the time set for the Public Hearing, no owner of real property within the proposed GHAD had made a written objection to its formation in accordance with the provisions of Public Resources Code Section 26564; and

WHEREAS, at the March 1, 2016 hearing, no owners of more than 50 percent of the assessed valuation of the real property within the proposed Hayward GHAD objected to the GHAD's formation; and

WHEREAS, upon adoption of this Resolution, the Hayward GHAD shall be immediately formed as a governmental district, a political subdivision of the State of California, governed in accordance with Public Resources Code Sections 26500, et seq., and as a legal entity entirely distinct and separate from the City of Hayward;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby orders that:

1. The City Council approves and orders the formation of the Hayward GHAD as described in Resolution 16-016.
2. In accordance with Public Resources Code Section 26567, the City Council appoints itself as the Board of Directors for the Hayward GHAD.
3. In addition to all other legal requirements, the GHAD will be responsible for hiring its own staff (or contracting with parties to perform such staff services), including all workers who will undertake operation, maintenance, replacement, repair and other activities of the GHAD, and no City employees shall perform such services for GHAD facilities and improvements unless the GHAD and the City enter into a Joint Powers Agreement that makes clear that City employees are acting as GHAD employees when providing services for the GHAD.
4. At a future GHAD Board meeting the GHAD Board will consider a separate Resolution for adoption of the La Vista Plan of Control and to initiate the establishment and authorization of an assessment on the La Vista development included in the GHAD.
5. These proceedings are exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Public Resources Code Section 21080(b)(4).
6. The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council’s decision is based are the City Clerk and the City Clerk’s Office at 777 B. Street, Hayward, California respectively.
7. The recitals are incorporated herein by this reference.
8. This Resolution shall become effective immediately upon its passage and adoption.

IN COUNCIL, HAYWARD, CALIFORNIA March 1, 2016

AYES: COUNCIL MEMBERS:
 NOES: COUNCIL MEMBERS:
 ABSTAIN: COUNCIL MEMBERS:
 ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

PETITION FOR FORMATION OF THE HAYWARD GEOLOGIC HAZARD ABATEMENT DISTRICT PURSUANT TO DIVISION 17 (commencing with section 26500) OF THE PUBLIC RESOURCES CODE OF THE STATE OF CALIFORNIA

TO: The Clerk of the City of Hayward

The undersigned owner of land within the boundaries of the district proposed in this petition hereby requests that the Hayward City Council initiate proceedings to form the Hayward Geologic Hazard Abatement District (GHAD) pursuant to Article 3 (commencing with Public Resources Code § 26550) and Article 4 (commencing with Public Resources Code § 26561) of Chapter 2 of Division 17 of the Public Resources Code (§ 26500 et seq.). Said owner is the owner of all the territory proposed to be included within the proposed district.

(a) This petition is made pursuant to Division 17 of the Public Resources Code with particular reference to Section 26550.5, 26552, and 26553.

(b) Opposite the signature of each petitioner is an indication of the lot, tract and map number or other legal description sufficient to identify the signature of the petitioner as that of an owner of land within the territory proposed to be included within the proposed district.

(c) Opposite the signature of each petitioner is an indication of the date on which said petitioner's signature was affixed to this petition.

(d) The following documents are attached to this petition and are incorporated herein by this reference as if set forth in full in the petition:

1. A map of the boundaries of the territory proposed to be included in the proposed district (Exhibit A);

2. A legal description of the boundaries of the territory proposed to be included within the proposed district (Exhibit B); and

3. A Plan of Control prepared by an Engineering Geologist certified pursuant to Section 7822 of the California Business and Professions Code, which describes in detail geologic hazards, their location and the areas affected thereby, and a plan for their prevention, mitigation, abatement and control thereof (Exhibit C).

- Exhibits: A - Plat
B - Legal Description
C - La Vista Plan of Control

La Vista, L.P.

A [Signature] _____

Name: Jim Summers

Title: PRESIDENT _____

Date: 1/14/2016 _____

Assessor's Parcel Number(s): _____



EAST BAY REGIONAL PARK DISTRICT

PARCEL 2
PARCEL MAP 3796

LA VISTA LP
2007-408664

LA VISTA LP
2006-301610

UNSURVEYED REMAINDER

TRACT 7620
— M —

GARIN VISTA, LLC

PARCEL O

PARCEL T

PARCEL N

NEWBERRY

MOITA

ALDRICH

BROWNE

JIA

PARCEL D

PARCEL U

TRACT 4613
126 M 77

PARCEL C

SILVA

DUENAS

TRACT 5277
166 M 42

ALQUIRE PARKWAY

PLASCENCIA

PARCEL B
ERSTED

PARCEL A

STATE OF CALIFORNIA

STATE OF CALIFORNIA
PARCEL P

STATE OF CALIFORNIA

TENNYSON ROAD

MISSION BOULEVARD



(IN FEET)
1 inch = 600 ft.

SHEET 1 OF 3 SHEETS

G:\JOB2005\053019\MAPPING\PLATS\GHAD EXHIBIT.DWG

EXHIBIT A
PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
GEOLOGIC HAZARD
ABATEMENT DISTRICT
CITY OF HAYWARD, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ■ PLANNERS ■ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:
1" = 600'

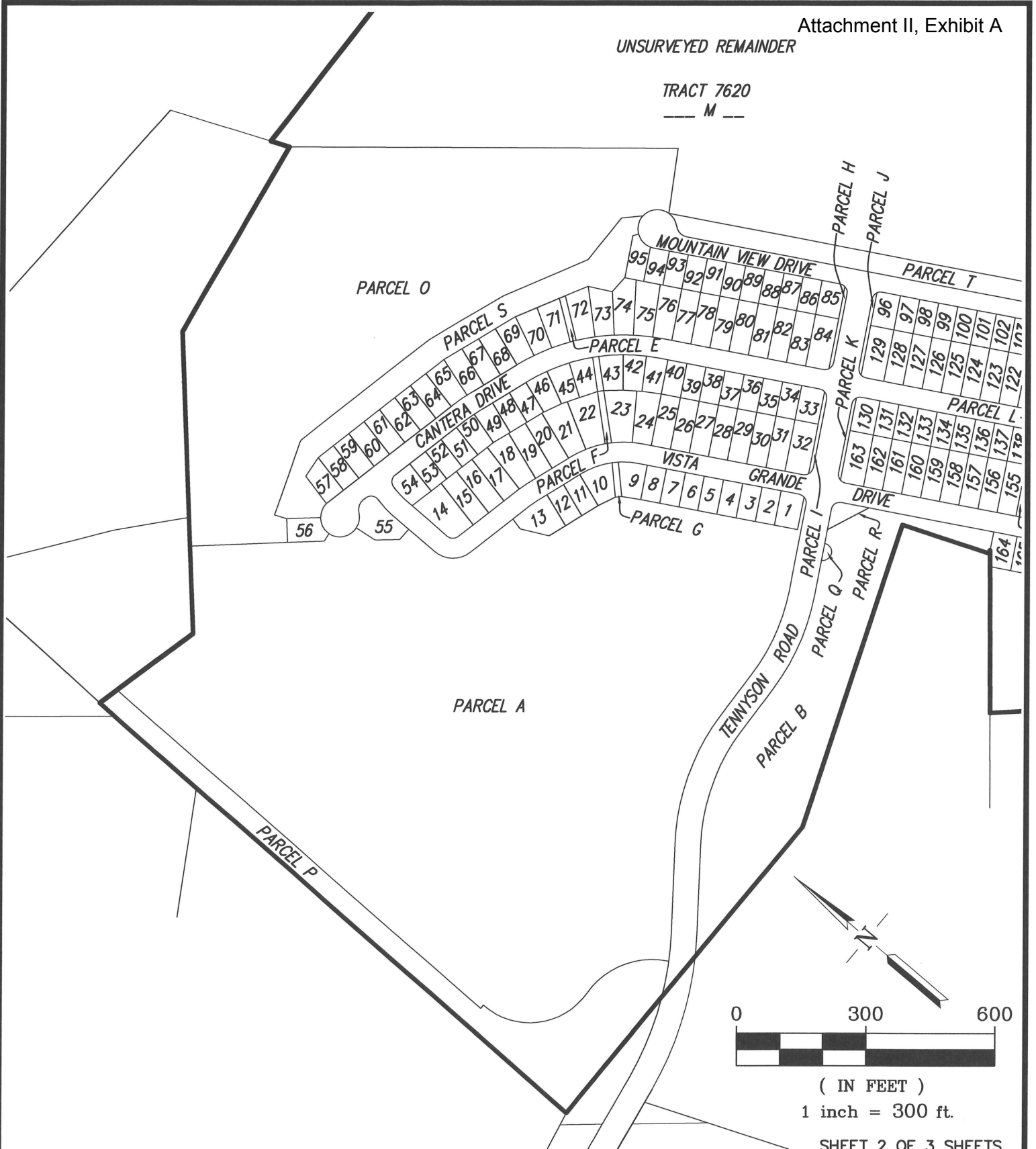
DATE:
7-6-2015

JOB NO.:
053019

UNSURVEYED REMAINDER

TRACT 7620

--- M ---



SHEET 2 OF 3 SHEETS

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EXHIBIT A
PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
GEOLOGIC HAZARD
ABATEMENT DISTRICT
CITY OF HAYWARD, ALAMEDA COUNTY, CALIFORNIA



RUGGERI-JENSEN-AZAR
 ENGINEERS ■ PLANNERS ■ SURVEYORS
 4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
 PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:
1" = 300'

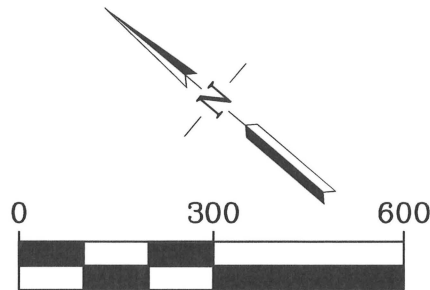
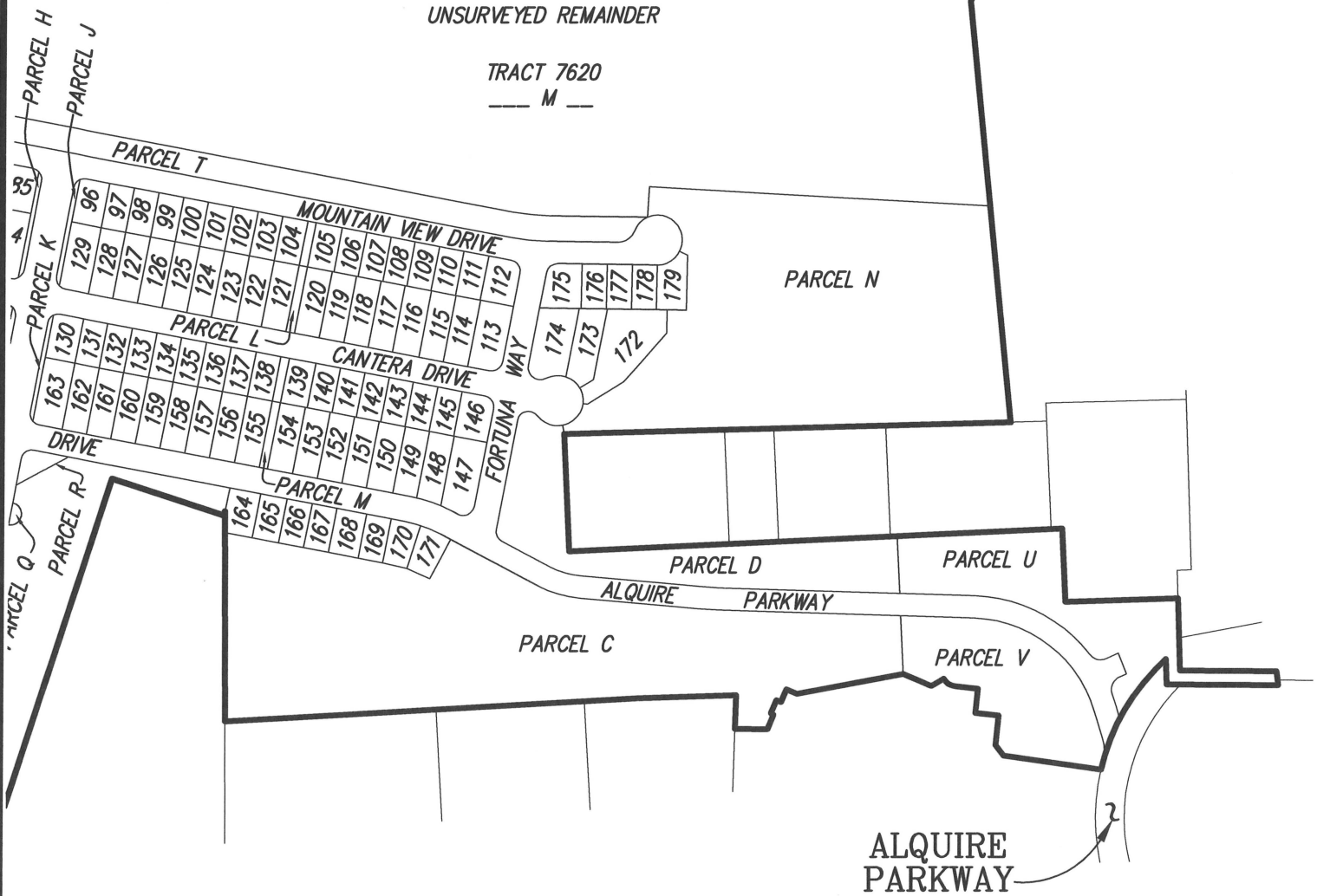
DATE:
7-6-2015

JOB NO.:
053019

UNSURVEYED REMAINDER

TRACT 7620

M



(IN FEET)

1 inch = 300 ft.

SHEET 3 OF 3 SHEETS

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EXHIBIT A
PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
GEOLOGIC HAZARD
ABATEMENT DISTRICT
CITY OF HAYWARD, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
 ENGINEERS ■ PLANNERS ■ SURVEYORS
 4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
 PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:
1" = 300'

DATE:
7-6-2015

JOB NO.:
053019

EXHIBIT "B"

Real Property situate in the City of Hayward, County of Alameda, and State of California; and being all of Lots 1 thru 179 & all of Parcels A thru V as created by that certain map entitled "Tract 7620" and filed on _____ and recorded in Book _____ of Maps at pages ___ through ___, Official Records of said County, and all of the certain parcel described as Parcel Two in a Grant Deed to La Vista LP. recorded on August 7, 2006 under document number 2006-301610 Official Record of said County, and all of that certain parcel of land described in the Grant Deed to La Vista LP. recorded on November 30, 2007 under document number 2007-408664 Official Records of said County.

End of Description

Prepared by:

Scott A. Shortlidge, LS. 6441

Date

**PLAN OF CONTROL
FOR LA VISTA DEVELOPMENT**

**HAYWARD GEOLOGIC HAZARD
ABATEMENT DISTRICT (GHAD)
HAYWARD, CALIFORNIA**



Expect Excellence



Submitted to:
Mr. Jim Summers
La Vista, L.P.
11555 Dublin Boulevard
Dublin, CA 94568

Prepared by:
ENGEO Incorporated

February 5, 2016

Project No:
6671.105.001

DRAFT 5

Project No.
6671.105.001

February 5, 2016

Mr. Jim Summers
La Vista, L.P.
11555 Dublin Boulevard
Dublin, CA 94568

Subject: La Vista Development
Hayward Geologic Hazard Abatement District (GHAD)
Hayward, California

**GEOLOGIC HAZARD ABATEMENT DISTRICT (GHAD)
PLAN OF CONTROL**

Dear Mr. Summers:

Attached is the proposed Plan of Control for the La Vista development (Tract 7620) within the Hayward Geologic Hazard Abatement District (GHAD). This proposed Plan of Control satisfies portions of Condition of Approval Number 84 related to GHAD formation.

We are pleased to be of service to you on this project. If you have any questions concerning the contents of our report, please do not hesitate to contact us.

Sincerely,

ENGEO Incorporated

Eric Harrell, CEG
eh/pcg/jf

Paul C. Guerin, GE

DRAFT 5

TABLE OF CONTENTS

Letter of Transmittal

1.0	AUTHORITY AND SCOPE	1
1.1	PROPERTY IDENTIFICATION	1
2.0	BACKGROUND	1
2.1	SITE CONDITIONS AND HISTORY	1
2.2	LA VISTA DEVELOPMENT	2
2.3	OPEN SPACE	2
3.0	SITE GEOLOGY – LA VISTA	3
3.1	GEOLOGIC SETTING	3
3.1.1	Artificial Fill	3
3.1.2	Residual Soil	4
3.1.3	Landslide Deposits	4
3.2	BEDROCK	4
3.2.1	Franciscan Greenstone	4
3.2.2	Franciscan Sheared Rock	4
3.2.3	Serpentinite and Serpentinized Gabbro	4
3.2.4	Knoxville Formation	5
3.3	GROUNDWATER.....	5
3.4	SEISMIC SOURCES.....	5
4.0	GEOLOGIC HAZARDS	6
4.1	SLOPE INSTABILITY	6
4.1.1	Fault Rupture and Creep	8
4.1.2	Seismically Induced Ground Shaking.....	9
5.0	CRITERIA FOR GHAD RESPONSIBILITY	9
5.1	ISOLATED OR REMOTE FEATURE REQUIRING MITIGATION.....	9
5.2	SINGLE PROPERTY	9
5.3	GEOLOGIC HAZARDS RESULTING FROM NEGLIGENCE OF PROPERTY OWNER	10
5.4	PROPERTY NOT ACCEPTED.....	10
5.5	GEOLOGIC HAZARD WHICH REQUIRES EXPENDITURE IN AMOUNT EXCEEDING THE VALUE OF THE THREATENED OR DAMAGED IMPROVEMENT	10
5.6	GHAD FUNDING OR REIMBURSEMENT FOR DAMAGED OR DESTROYED STRUCTURES OR SITE IMPROVEMENTS	11
5.7	NO REIMBURSEMENT OF EXPENSES INCURRED BY PROPERTY OWNERS.....	11

TABLE OF CONTENTS (Continued)

6.0 ACCEPTANCE..... 11

6.1 ACTIVATION OF ASSESSMENT.....11

6.2 RESPONSIBILITY FOR GHAD ACTIVITIES.....11

6.3 OWNERSHIP OF THE OPEN SPACE12

**6.4 PROCESS FOR TRANSFERRING RESPONSIBILITY FOR GHAD
 ACTIVITIES12**

**7.0 HAYWARD GHAD MAINTENANCE AND MONITORING
RESPONSIBILITIES.....13**

**7.1 GEOTECHNICAL TECHNIQUES FOR MITIGATION OF
 LANDSLIDE AND EROSION HAZARDS.....14**

8.0 PRIORITY OF GHAD EXPENDITURES15

9.0 MAINTENANCE AND MONITORING SCHEDULE16

10.0 RIGHT-OF-ACCESS17

SELECTED REFERENCES

APPENDIX A - Figures

APPENDIX B - EXHIBIT A – Plat and Legal Description for GHAD Boundary

APPENDIX C - GHAD Disclosure and Right of Access

APPENDIX D - Permanent Easement Agreements “M” and “TBD”

1.0 AUTHORITY AND SCOPE

Under Condition of Approval No. 84 for the La Vista Quarry development (Tract 7620), the City of Hayward has required that a GHAD be formed for the La Vista development prior to issuance of the 50th residential building permit. To satisfy this requirement, the current owner of the La Vista development, La Vista, L.P., has petitioned the Hayward City Council to form the Hayward GHAD (“GHAD” or “District”). The term Developer as used herein, shall mean La Vista, L.P. and its successors and assigns. The Hayward GHAD is proposed to be formed under authority of the California Public Resources Code (Division 17, commencing with Section 26500).

Section 26509 of the Public Resources Code requires a Plan of Control, prepared by a State-Certified Engineering Geologist, as a prerequisite to formation of a GHAD. Pursuant to Section 26509, this Plan of Control was prepared by an Engineering Geologist certified pursuant to Section 7822 of the Business and Professions Code and describes, in detail, the geologic hazards, their location, and the area affected by them. It also provides a plan for the prevention, mitigation, abatement, or control thereof.

As used in this Plan of Control, and as provided in Section 26507, “geologic hazard” means an actual or threatened landslide, land subsidence, soil erosion, earthquake, fault movement, or any other natural or unnatural movement of land or earth.

1.1 PROPERTY IDENTIFICATION

The land within the proposed GHAD boundary (“GHAD Boundary”) and the offsite GHAD-maintained easement areas “M” and “TBD” are shown on the GHAD Boundary Plat (Appendix B, Exhibit A). The GHAD Boundary includes all areas within the proposed La Vista development (Tract 7620). The legal description of the land to be included within the GHAD Boundary is included in Appendix B, Exhibit A. Legal descriptions of easement areas “M” and “TBD” are included in the Permanent Easement Agreements “M” and “TBD” (Appendix D).

2.0 BACKGROUND

2.1 SITE CONDITIONS AND HISTORY

The La Vista Quarry site was mined for aggregate products and borrow material for offsite projects beginning in the 1950s. Mining was essentially completed by the early 2000s. Prior to mining, the quarry pit area consisted of a steep west-facing slope inclined at approximately 2:1 (horizontal:vertical) or steeper for a height of approximately 350 feet. The lower portions of the property sloped gradually to the west, down to Mission Boulevard. The transition between steep and gradual slopes occurred approximately at the location of the active traces of the Hayward Fault. The mining created a west-facing slope that is up to approximately 350 feet high. In 2002, final quarry reclamation slopes were graded from the ridge crest at approximately 780 feet to an elevation of approximately 500 feet, near the upper extent of the steep quarry wall. The quarry

reclamation slopes were graded at inclinations of generally between 2.5:1 and 2:1, or locally flatter, with drainage benches at approximately 40-foot vertical intervals. At that time, concrete V-ditches were installed on the upper four benches.

The proposed development area and portions of adjacent slopes were rough graded between June 2006 and November 2007. The proposed project grading is depicted in the Precise Development Plan and the approved grading plans. The plans indicate that fills up to about 50 feet from the existing grades were placed. Fill slopes within the development area around and west of the lots are depicted at inclinations of 2:1 to 3:1. Graded slopes east of the lots are depicted at inclinations of 2.5:1.

The grading also included repair of a landslide that had developed on the reclamation slope in 2005 and installation of a system of subsurface drains throughout the project. The as-built locations of the drain system are shown on Appendix A, Figure 3.

2.2 LA VISTA DEVELOPMENT

The La Vista Project includes 179 single-family residential lots arranged on three level terraces separated by 2:1 (horizontal:vertical) slopes up to approximately 25 feet high served by Mountain View Drive, Cantera Drive, and Vista Grande Drive. Additional improvements include a park, trails, a water quality pond, a dual use detention basin and a water quality/detention basin.

Site access to La Vista will be via an extension of Tennyson Road through the center of the site and Alquire Parkway from the south. Mountain View Drive is a proposed single-loaded street bounded on the east by a 50-foot-wide debris bench. The other streets are largely double-loaded with lots separated by rear yard 2:1 slopes with retaining walls at the base. The western lots are located at the top of a fill slope that is up to about 55 feet high, inclined at between 2.5:1 and 3:1. The plan shows the quarry slope east of the project at an inclination of 2.5:1 for heights of up to about 220 feet. Lots on Cantera Drive are separated from the slope by a 50-foot-wide debris bench. The vertical thickness of fill below the lots are indicated as great as 40 to 50 feet, generally decreasing in thickness in the vicinity of the southern ends of Mountain Vista Drive and Cantera Drive to near zero or in cut. The approved grading plans indicate that approximately 2.3 million cubic yards of fill was placed.

2.3 OPEN SPACE

Title for parcels within the GHAD Boundary labeled B, C, D, N, O, U, V, Unsurveyed Remainder, La Vista L.P. 2006-301610 and La Vista L.P. 2007-408664 (collectively, the “GHAD Parcels”) – as such Parcels are shown on Appendix B, Exhibit A – will be conveyed to the GHAD as provided in Sections 6.3 and 6.4 herein below. As the open space within and immediately adjacent to the proposed Tract 7620 development is an amenity that benefits all of the property owners within the Tract 7620 development, the funding of the maintenance of the open space will be shared by all current and future owners of residential parcels within the GHAD Boundary.

Within the GHAD Parcels, the GHAD will assume responsibilities that relate to its position as a GHAD and also duties as a responsible land owner. The GHAD is charged with responsibilities that relate to the prevention, mitigation, abatement, or control of geologic hazards, which includes the maintenance of drainage facilities and associated improvements. This will include the monitoring and maintenance of drainage facilities which, if subject to improper care, could result in decreased slope stability, the prime concern of the GHAD. The drainage facilities to be maintained by the GHAD include water quality and water detention basins, Best Management Practice (BMP) water quality treatment facilities, concrete-lined drainage ditches, and open space storm drain facilities.

The GHAD will mitigate or abate landslide or erosion hazards that could directly affect improved, developed, and accepted properties (as defined in Section 6) within the project or on Easement “M” or “TBD”, in accordance with Section 5. The GHAD will also perform maintenance of water control and conveyance facilities and assume other peripherally related open-space responsibilities, such as vegetation management for fire suppression, trail maintenance, and selected other maintenance associated with the GHAD Parcels. On Easements “M” and “TBD”, the GHAD will perform vegetation management for fire suppression, due to the potential for erosion caused by improper vegetation management. Additionally, the GHAD shall have the right to approve any construction, maintenance or repair in the GHAD Parcels which the GHAD determines has the potential to impact geologic stability.

3.0 SITE GEOLOGY – LA VISTA

3.1 GEOLOGIC SETTING

La Vista is located within the Coast Ranges geologic province of California, a series of northwest-trending ridges and valleys. Bedrock in the province has been folded and faulted during regional uplift beginning in the Pliocene period, roughly 4 million years before present. A geologic map of the area prepared by Dibblee (1980) indicates the La Vista property is underlain by Franciscan greenstone, serpentinitized gabbro-diabase, serpentinite, and Knoxville formation (Berlogar Geotechnical Consultants (BGC), 2000).

3.1.1 Artificial Fill

Areas of pre-existing fills have been mapped at the La Vista property (BGC, 2000). The grading completed in 2006 and 2007 included removal of undocumented fill from the quarry floor based on an overexcavation plan prepared by BGC. The plan indicates that removal of non-engineered fill of up to about 20 feet below the quarry floor was anticipated. BGC indicates that all encountered non-engineered fill below the proposed lots, slopes and other improvements was removed and replaced with engineered fill within the areas completed at that time.

3.1.2 Residual Soil

Residual natural soils, derived by weathering of the underlying parent bedrock, were reported at the margin of the quarry excavations. The residual soils generally consisted of dark brown to red-brown dry, medium-stiff to stiff silty clay and sandy clay (BGC, 2000).

3.1.3 Landslide Deposits

Regional landslide mapping by Nilsen (1975) shows two landslide areas on the eastern portion of the La Vista property that appear to have been removed during quarry operations. Several additional landslides were identified by BGC during a previous study (2000). As shown on Appendix A, Figure 2, a number of additional landslides were mapped by BGC. During site grading, landslides were mitigated as shown on Table 4.1-1.

3.2 BEDROCK

As mentioned above, the La Vista property is underlain by Franciscan greenstone, serpentinitized gabbro-diabase, serpentinite, and Knoxville formation.

3.2.1 Franciscan Greenstone

Most of the western portion of the quarry is reportedly underlain by hard, gray-green, fine-grained metamorphosed greenstone. The greenstone contains veins of quartz and is cut by numerous typically northwest-striking and northeast-dipping tectonic shear planes and associated zones of closely fractured to crushed rock. The rock reportedly has a gravel-like appearance with an average particle size generally less than 1 inch, although there are scattered areas of larger intact particles (including boulder size). The greenstone has reportedly performed well in relatively steep slopes (BGC, 2000).

3.2.2 Franciscan Sheared Rock

A zone of sheared Franciscan rock was mapped near the serpentinite. This material consists of highly sheared shale with lenses or inclusions of serpentinite. The shale is reportedly dark gray in color, friable, and contains abundant clay seams. The structure has been disrupted by extensive shearing. The shearing is reportedly northwest striking and northeast dipping (BGC, 2000).

3.2.3 Serpentinite and Serpentinized Gabbro

Much of the east-central portion of the La Vista property is reportedly underlain by serpentinite and serpentinitized gabbro. These materials are reportedly dark green, friable to weak, are generally highly sheared, and contain abundant clay seams. Additionally, the rock structure is reportedly complex with predominantly northwest striking with northeast-dipping slickensided sheared zones in many exposures (BGC, 2000).

3.2.4 Knoxville Formation

Most of the quarry slopes are reportedly underlain by interbedded brown to black shale and brown to greenish-gray greywacke sandstone identified as Knoxville formation. Exposures of the Knoxville formation are reported to be generally weak to moderately strong, highly fractured to crushed, and thinly bedded (BGC, 2000).

3.3 GROUNDWATER

Several springs were observed in the vicinity of quarry cut slopes during previous field reconnaissance activities, but no free water was encountered in test pits excavated at the La Vista property (BGC, 2000). Groundwater was encountered during a geotechnical exploration performed in November 1988 at depths ranging between 11 and 45 feet below the ground surface (BGC, 2000). It should be noted that fluctuations in groundwater levels occur seasonally and over a period of years because of variations in precipitation, temperature, irrigation, and other factors.

3.4 SEISMIC SOURCES

The La Vista project lies within the mapped Alquist-Priolo Earthquake Fault Hazard Zone for the Hayward Fault, established by the California Geological Survey (CGS). A geologic map of the quarry, including the location of the Hayward Fault zone as determined by site-specific mapping, is shown on Appendix A, Figure 2. As discussed above, the active Hayward Fault zone generally occurs at the base of the historic steeper ridge slopes that existed prior to quarry excavations. The fault zone consists of a band of sheared soil and rock designated by BGC as the “concentrated fault zone” that varies in width from roughly 300 feet at the southern side of the property to 100 feet at the north side. BGC performed refined mapping of the concentrated fault zone at the east and west boundaries of the zone by excavating and logging a series of trenches. BGC logged additional shear zones in four trenches outside the main “concentrated fault zone” and outside the 50-foot setback zone designated from the edge of the “concentrated shear zone” (Trenches T-3, T-4, T-14 and T-15) some of which appear to have exposed sheared contacts between greenstone and soil (Trenches T-14 and T-15); however, these shear zones were not designated as active by BGC or depicted on the geologic map in the design-level report. BGC interpreted these zones as not active based on reported lack of continuity or inconsistent orientations between trenches. BGC designated a “special building foundation zone” which includes Lots 147 through 159 and 164 through 171. This zone was designated to mitigate the risk of “minor sympathetic rupture” in the event of rupture along the adjacent main fault zone. BGC does not provide a specific estimate of the expected magnitude of the “minor sympathetic rupture” or the type of movement that can be expected in terms of vertical, horizontal or shear displacement. They recommend post-tensioned slab foundations to mitigate the risk in the special foundation zone, but do not provide specific slab design recommendations.

An earthquake of moderate to high magnitude generated within the San Francisco Bay Region, similar to those that have occurred in the past, could cause considerable ground shaking at the

La Vista property. The Hayward Fault is considered capable of generating an earthquake with a maximum moment magnitude of 7.1. Other seismic sources near the La Vista property include the Calaveras Fault (approximately 7 miles to the northeast) and the San Andreas Fault (approximately 16 miles to the southwest). The Calaveras Fault is considered capable of generating an earthquake with a maximum moment magnitude of 6.8, and the San Andreas Fault is considered capable of generating an earthquake with a maximum moment magnitude of 7.9.

4.0 GEOLOGIC HAZARDS

The following geologic hazards were identified for the La Vista property in the previous studies and are expected to remain to some extent after site grading has been completed.

- Slope instability
- Fault rupture and creep
- Seismically induced ground shaking

4.1 SLOPE INSTABILITY

Earth stability is the GHAD's prime geotechnical concern within the GHAD Boundary and Easements "M" and "TBD". This is not unique to this project, but is of importance for hillside projects in the San Francisco Bay Area. This section describes several types of slope instability which are within the GHAD's responsibility, subject to the provisions of Sections 6 and 7.

Landslides are a common geologic phenomenon and are part of the process of mass wasting. Weathered or fractured bedrock and soil are transported downslope over geologic time as a result of gravitational and hydrostatic forces. A landslide is a deposit of soil and/or bedrock moving downward from its original position under the influence of gravity. Landslides include a variety of morphologies and are further defined by type of materials, wetness, and mode of movement. They can consist of mass movements of earth materials that are primarily intact, and occur along discrete shear surfaces. These surfaces (shear or slip planes) can be rotational (conchoidal or concave), such as for earth slumps, or planar, as for translational earth slide or bedrock block slides. Most landslides are truly "complex landslides", sliding, falling and flowing with more than one type of movement and/or material.

Table 4.1-1 summarizes the landslide areas identified at the La Vista property by BGC (2000), the proposed corrective measures and areas remaining undisturbed to maintain the existing slope profiles.

TABLE 4.1-1
 La Vista
 Select Areas of Slope Instability

Identification	Proposed Action
Landslide 1	Removal and replacement of landslide with subdrained engineered fill.
Landslide 2	Removal and replacement of landslide with subdrained engineered fill.
Landslide 3	No planned remediation; located outside limits of the proposed quarry reclamation.
Landslide 4	Landslide removed by a design cut.
Landslide 5	Landslide removed by a design cut.
Landslide 6	Landslide removed by a design cut.
Landslide 7	Landslide removed by a design cut.
Landslide 8	Landslide removed by a design cut.
Landslide 9	Landslide removed by a design cut.
Landslide 10	Landslide removed by a design cut.
Landslide 11	Landslide removed by a design cut.
Landslide 12	Landslide removed by a design cut.
Landslide 13	Landslide removed by a design cut.
Landslide 14	Landslide removed by a design cut.
Landslide 15	Landslide removed by a design cut.
Landslide 16	Landslide removed by a design cut.
Landslide 17	Portion of the landslide removed by the proposed cuts of the quarry reclamation.
Landslide 18	Removal and replacement of landslide with subdrained engineered fill.
Landslide 19	Removal and replacement of landslide with subdrained engineered fill.
Landslide 20	Landslide removed by a design cut.

Falls are an abrupt free-fall of earth materials off cliffs, steep cuts, or steep stream banks while earthflows are mass movements of earth materials in which the type of movement is one of flowing. When composed of soil finer than gravel size, the flowing material is commonly called a mudflow. A debris flow/debris avalanche is composed of natural earth materials, artificial fill, and/or organic debris which flow downslope with speed. Most of the material is transported away from the area of initial ground failure.

Slope failures are also often triggered by increased pore water pressure due to the infiltration of rainwater. The resulting decrease of shear resistance (internal resistance to deformation by shearing) can cause the slope to move. The level of groundwater table varies with the amount of rainfall for the area. If rainfall is higher than average during the winter season, the water table will become higher than average on a hillslope and groundwater pressures may become sufficiently high to initiate slope movement.

Landslides located within open space areas are natural landforms that do not require mitigation except where they affect man-made improvements. Debris catchment areas are the principal mitigation method used within the GHAD for areas between potentially unstable slopes and improvements. The debris catchment structures include debris benches, debris berms, and runoff areas. GHAD maintenance of the areas will be critical to maintain adequate protection for the Site Improvements (as such term is defined in Section 5.1). Maintenance and monitoring of these areas is described in Section 9. Potential mitigation and repair measures for GHAD areas near development are discussed in Section 7. A copy of the as-built subdrain plan is shown on Appendix A, Figure 3.

Soil creep is the slow, often imperceptible, deformation of slope materials under low stress levels, which normally affects the shallow portion of the slopes, but can be deep seated where a weak zone of soil or bedrock exists. It results from gravitational and seepage forces, and may be indicative of conditions favorable for landsliding. Creep can be caused by wetting and drying of clays, by solution and crystallization of salts, by the growth of roots, by burrowing animals and by downslope movement of saturated ground. Colluvium refers to the mantle of loose soil and weathered bedrock debris that progresses down hillsides by creep.

The District shall also be concerned with erosion and sedimentation in open space or affecting developed lots or improvements. Erosion is defined as the process by which earth materials are loosened and removed by running water on the ground surface or in the subsurface. Sedimentation is the depositing or settling of soil or rock particles from a state of suspension in a liquid.

Hilly terrain open space either in a natural condition or particularly on excavated slopes can be subject to erosion. Landslide deposits which are sometimes in a loosened condition are particularly prone to erosion. Earth flow-, debris flow- and mud flow-type landslides typically have an area of deposition or accumulation (sedimentation area) at their base. Graded slopes in the District, particularly those in excess of 20 feet in vertical height or those not sufficiently vegetated, can be subject to erosion and therefore a source of transported sediment.

4.1.1 Fault Rupture and Creep

Given the proximity of the La Vista property to the Hayward Fault, there is a hazard of primary fault rupture in the event of an earthquake on the Hayward Fault. A moderate to strong earthquake could result in lateral and/or vertical offset, which could pose an adverse impact to structures and improvements. Additionally, the Hayward Fault may experience slow-moving

offset, or creep, during the design life of the development. To mitigate the hazard of fault rupture and creep beneath proposed structures, a 50-foot-wide structural setback has been established on both sides of the fault. Practical measures to reduce the potential for disruption of utilities due to fault creep at fault crossings should be undertaken. Additionally, all structures and improvements should be designed using sound engineering judgment and the latest building code requirements, as a minimum.

4.1.2 Seismically Induced Ground Shaking

As identified in the geologic and geotechnical reports pertaining to the project, an earthquake of moderate to high magnitude generated within the San Francisco Bay Region could cause considerable ground shaking at the La Vista property, similar to that which has occurred in the past. To mitigate the shaking effects, all structures should be designed using sound engineering judgment and the latest building code requirements, as a minimum.

Seismic slope stability analysis was incorporated in the corrective grading plans for the graded portions of the properties; however, seismically generated slope failures could occur in open space areas outside of the development limits. The proposed catchments, including debris benches, berms, and runout areas, will be maintained to reduce the potential for impacts to the project from upslope failures.

5.0 CRITERIA FOR GHAD RESPONSIBILITY

In forming the GHAD and establishing the assessment levels and budgets for the District, including offsite Easements “M” and “TBD” (which will be maintained by the GHAD but will not be assessed by the GHAD), it is important to clearly define the limits of the GHAD’s responsibilities. The GHAD will accept responsibility for property as described in Section 6 of this Plan of Control; however, the intent of this Plan of Control is not to extend the GHAD’s responsibilities to every potential situation of instability; rather, the following are exclusions from GHAD responsibility.

5.1 ISOLATED OR REMOTE FEATURE REQUIRING MITIGATION

The GHAD shall not have responsibility to monitor, abate, mitigate or control slope instability that does not involve damage to or pose a significant threat to damage Site Improvements. As used herein, the term “Site Improvements” means buildings, public and private roads (including, but not limited to, Tennyson Road where such road adjoins Easement “TBD” and the private road cut bordering Easement “TBD”), sidewalks, utilities, improved trails, swimming pools, tennis courts, gazebos, cabanas, geologic stabilization features, or similar improvements.

5.2 SINGLE PROPERTY

The GHAD will not prevent, mitigate, abate or control geologic hazards which are limited in area to a single parcel of property unless the geologic hazard has damaged, or poses a significant

threat of damage to Site Improvements located on other property within the GHAD Boundary. This exclusion does not apply to geologic hazards existing on (i) open space property owned by any homeowner's associations, (ii) Easement "M" and Easement "TBD", or (iii) the GHAD Parcels.

5.3 GEOLOGIC HAZARDS RESULTING FROM NEGLIGENCE OF PROPERTY OWNER

The GHAD may, in the GHAD Manager's sole discretion, decline to prevent, mitigate, abate or control geologic hazards which occurred or resulted from any negligence of the homeowner and/or the homeowner's contractors, agents or employees in developing, investigating, grading, constructing, maintaining or performing or not performing any post-development work on the subject property as long as the geologic hazard is limited to a single lot, pursuant to the single-property exclusion noted above. If the GHAD bears expense as the result of negligence described in this section, the GHAD may pursue reimbursement from the negligent parties.

The GHAD Manager is an entity employing a licensed Geotechnical Engineer who will oversee the operations of the GHAD, including preparation of GHAD budgets. The GHAD Manager is hired by and reports to the GHAD Board of Directors.

5.4 PROPERTY NOT ACCEPTED

The GHAD shall not have responsibility to repair damage, which is situated on a parcel of real property, which the GHAD has not accepted in accordance with Section 6, below. The GHAD, however, may monitor, abate, mitigate or control geologic or hydrogeologic hazards on a parcel of real property which the GHAD has not accepted in accordance with Section 6 and is not excluded from GHAD responsibility by Sections 5.1, 5.2, and 5.3; provided, however, that GHAD responsibility on such parcel shall be limited to the extent necessary to address damage to, or a significant threat of damage to, Site Improvements which are within a parcel of real property which the GHAD has accepted in accordance with Section 6. Should the District be required to respond to a geologic hazard outside the GHAD Boundary, the District may take such actions as may be appropriate to recover costs incurred as a result of preventing, mitigating, abating or controlling such geologic hazard from the responsible party, if any.

5.5 GEOLOGIC HAZARD WHICH REQUIRES EXPENDITURE IN AMOUNT EXCEEDING THE VALUE OF THE THREATENED OR DAMAGED IMPROVEMENT

The GHAD may elect not to prevent, mitigate, abate or control a geologic hazard where, in the GHAD Manager's sole discretion, the anticipated expenditure required to be funded by the GHAD to prevent, mitigate, abate or control the geologic hazard will exceed the value of the structure(s) and site improvement(s) threatened with damage or loss.

5.6 GHAD FUNDING OR REIMBURSEMENT FOR DAMAGED OR DESTROYED STRUCTURES OR SITE IMPROVEMENTS

In the event a residence or any other structure, Site Improvement or landscaping is damaged or destroyed due to, or as a result of, a geologic hazard, the GHAD may fund or reimburse the property owner for the expenses necessary to repair or replace the damaged or destroyed structure, Site Improvement or landscaping. Unless authorized by the Board of Directors, the dollar amount of the GHAD funding or reimbursement may not exceed ten percent (10%) of the costs incurred by the GHAD in preventing, mitigating, abating or controlling the geologic hazard responsible for the damage¹. In the event the geologic hazard damaged or destroyed a structure, Site Improvement or landscaping which violated any provisions of the City Building Code or City Ordinance Code at the time of its installation or improvement, the GHAD may decline to provide any funding, or reimbursement to the property owner, for repair or replacement of the damaged structure, Site Improvement or landscaping.

5.7 NO REIMBURSEMENT OF EXPENSES INCURRED BY PROPERTY OWNERS

The GHAD will not be obligated to reimburse a property owner for expenses incurred for the prevention, mitigation, abatement, or control of a geologic hazard absent a written agreement between the property owner and the GHAD to that effect, which agreement has been executed prior to the property owner incurring said expenses, and following an investigation conducted by the GHAD.

6.0 ACCEPTANCE

6.1 ACTIVATION OF ASSESSMENT

An annual assessment shall be promptly authorized on all residential parcels within the GHAD Boundary as shown on Appendix B, Exhibit A. Easements “M” and “TBD” are not residential parcels within the GHAD Boundary and, as such, will not be assessed by the GHAD. The assessment shall be levied by the GHAD on each individual parcel beginning the first fiscal year following issuance of a building permit for that parcel.

6.2 RESPONSIBILITY FOR GHAD ACTIVITIES

On June 23, 2015, the City of Hayward approved the Final Map within the boundaries of the proposed Hayward GHAD. La Vista, L.P. currently owns the developable parcels shown on the Final Map and shall have the responsibility to perform all the activities of the GHAD on property within the Final Map and Easements “M” and “TBD”. Such responsibility shall automatically transfer to the GHAD at 9:00 a.m. on the day exactly one year after the first residential building

¹ For example, if a landslide causes \$10,000 in structural damage to each one of four neighboring homes for a total of \$40,000 in structural damage and it costs the District \$100,000 to design and install a new retaining wall to abate the slide, the District may only reimburse each property owner \$2,500 of their \$10,000 in structural damage.

permit is issued by the City of Hayward (“Transfer Eligibility Date”). The Transfer Eligibility Date may be extended at the sole discretion of the Developer provided that the assessments shall continue to be levied during the extension period and that notice of such extension is delivered to the GHAD Manager at least 30 days prior to the Transfer Eligibility Date. The Developer intends that the period between the levying of the GHAD assessment and the GHAD becoming responsible to perform activities on properties within the Final Map will allow the District to accumulate reserve funds without incurring significant expenses.

6.3 OWNERSHIP OF THE OPEN SPACE

Ownership of the GHAD Parcels shown on Appendix B, Exhibit A will be conveyed by the Developer to the GHAD at the end of the transfer process described in Section 6.4, which shall be the date the GHAD becomes responsible for oversight of the actual physical maintenance of the GHAD Parcels as provided in this Section. The Developer shall record a grant deed transferring to the GHAD fee title to the GHAD Parcels.

6.4 PROCESS FOR TRANSFERRING RESPONSIBILITY FOR GHAD ACTIVITIES

After the Transfer Eligibility Date for one or more GHAD Parcels, the process for transferring responsibility for performing GHAD activities on such Parcel(s) shall be as follows:

1. Up to one year in advance of the Transfer Eligibility Date or in any subsequent year, at its discretion, the Developer may apply to the GHAD ("Transfer Application") to transfer the responsibility for performing GHAD Activities (as such term is defined in Section 7.0 herein below) for such Parcel(s) to the District.
2. Within 30 days of receiving such Transfer Application, the GHAD Manager shall verify that all the facilities for which the GHAD will have maintenance responsibility have been approved, constructed and maintained according to the approved plans and specifications for the individual improvements, and that such facilities are operational and in good working order.
3. Within 15 days of such inspection, the GHAD will send the Developer a list ("Punch list") of all of the items that need to be constructed, repaired or otherwise modified in order to comply with the city-approved plans and specifications.
4. The Developer shall notify the GHAD when it has completed the items identified on the Punch list. Within 30 days of receipt of such notice, the GHAD shall verify that all Punch list items have been completed and notify the Developer that the District accepts responsibility for performing all future GHAD activities on such Parcel(s).
5. The GHAD Manager shall confirm that the reserve requirement defined in the Engineer's Report approved by the GHAD Board has been met. The Engineer's Report is the document

that establishes the individual property owners' GHAD assessment limit based on the projected expenses (budget) of the GHAD.

6. Prior to conveyance of the GHAD Parcels to the GHAD, the Developer shall record a Declaration of Restrictive Covenants, Right of Entry and Disclosures Regarding Geologic Hazard Abatement District ("Declaration") previously approved by the GHAD.

As part of the transfer, the Developer of the GHAD Parcel(s) to be transferred will provide the GHAD, for its use, copies of the applicable geotechnical exploration reports, as-built grading plans, as-built corrective grading plans, as-built improvement plans, as-built subdrain plans or other pertinent documents as requested by the GHAD.

7.0 HAYWARD GHAD MAINTENANCE AND MONITORING RESPONSIBILITIES

Several entities shall have ownership and maintenance duties of common space within the La Vista development. Other than the GHAD, these entities include a Homeowner's Association ("HOA"), a Landscape, Lighting, and Irrigation District ("LLID"), the City of Hayward ("City"), and the Hayward Area Recreation District ("HARD"). Landscaping and irrigation within a 100-foot-wide fire break in open space and adjacent to the residential units shall be maintained by the LLID. A Facility Maintenance Exhibit (FME) delineating ownership and maintenance responsibilities is presented in Appendix A, Figure 1.

The GHAD will assume monitoring and maintenance responsibilities for the following site facilities and activities ("GHAD Activities"):

- General maintenance of the surface drainage improvements within the GHAD Boundary and Easements "M" and "TBD", such as the concrete V-ditches. The GHAD is also responsible for general maintenance of storm drain inlets and outlets in open space, subdrain outlets, and risers. Inspection and maintenance of concrete-lined drainage ditches.
- Monitoring and maintenance of measurement devices, such as piezometers, inclinometers, and tiltmeters, if any.
- Maintenance of existing property line/boundary fencing.
- Inspection and maintenance of surface water quality treatment, water quality pond, and detention basins within La Vista.
- Retaining wall east of Alquire Parkway at the northwest corner of the Moita property.
- Maintenance of two CDS water quality treatment units along Tennyson Road.

- Maintenance roads associated with the water quality pond and the detention basins.
- Maintenance roads/trails over public water mains on the GHAD Parcels.
- Debris benches and walls.
- Subdrains, including, but not limited to, those shown on Appendix A, Figure 3.
- Storm drain inlets, outfalls and pipelines within the GHAD Parcels and a portion of the public park area as shown on Appendix A, Figure 1.
- Maintenance including trails (other than City-owned public trails) within the GHAD Parcels.
- Slopes including Hayward Concentrated Fault Zone.
- Vegetation control for fire suppression.
- Maintenance of slopes including subdrains and surface drainage within Easements “M” and “TBD”.

As listed above, the GHAD will monitor and maintain slopes and drainage facilities within Easements “M” and “TBD” (Appendix B, Exhibit A). Although this area is outside the GHAD Boundary, the maintenance of these slopes (including vegetation management for erosion control) is necessary to reduce the potential for uncontrolled stormwater infiltration, erosion, and other potential geologic hazards that could affect properties and Site Improvements within the GHAD Boundary and, therefore, will be protective of facilities within the GHAD Boundary. Prior to the GHAD providing monitoring and maintenance for the slopes and drainage facilities within Easements “M” and “TBD”, Developer must transfer and assign its rights, duties, obligations and burdens under Easements "M" and "TBD" to the GHAD and the GHAD must be the beneficiary of a permanent easement by Hayward Tennyson, LLC acceptable to the GHAD. The GHAD is not responsible for installation, maintenance, or repair of any landscape or landscape related irrigation improvements within Easements “M” and “TBD”. In addition, the GHAD is not responsible for maintenance of other areas or improvements within Assessor’s Parcel Number 78C-461-1-13.

7.1 GEOTECHNICAL TECHNIQUES FOR MITIGATION OF LANDSLIDE AND EROSION HAZARDS

The techniques which may be employed by the GHAD to prevent, mitigate, abate, or control geologic hazards include, but are not limited to, the following.

- A. Removal of the unstable earth mass.

- B. Stabilization (either partial or total) of the landslide by removal and replacement with compacted, drained fill.
- C. Construction of structures to retain or divert landslide material or sediment.
- D. Construction of erosion control devices such as gabions, riprap, geotextiles, or lined ditches.
- E. Placement of drained engineered buttress fill.
- F. Placement of subsurface drainage devices (e.g. underdrains, or horizontal drilled drains).
- G. Slope correction (e.g. gradient change, biotechnical stabilization, slope trimming or contouring).
- H. Construction of additional surface ditches and/or detention basins, silt fences, sediment traps, or backfill or erosion channels.

Potential landslide and erosion hazards can often best be mitigated by controlling soil saturation and water runoff and by maintaining the surface and subsurface drainage system.

8.0 PRIORITY OF GHAD EXPENDITURES

Emergency response and scheduled repair expenditures by the GHAD are to be prioritized by the GHAD Manager, utilizing his or her discretion, based upon available funds and the approved operating budget. When available funds are not sufficient to undertake all of the identified remedial and preventive stabilization measures, the expenditures are to be prioritized as follows in descending order of priority:

- (A) Prevention, mitigation, abatement or control of geologic hazards that have either damaged or pose a significant threat of damage to residences, critical underground utilities or paved streets.
- (B) Prevention, mitigation, abatement or control of geologic hazards which have either damaged or pose a significant threat of damage to ancillary structures, including but not limited to water quality facilities, pool cabanas or restroom buildings.
- (C) Prevention, mitigation, abatement or control of geologic hazards which have either damaged or pose a significant threat of damage to open space amenities.
- (D) Prevention, mitigation, abatement or control of geologic hazards which have either damaged or pose a significant threat of damage limited to loss of landscaping or other similar non-essential amenities.

- (E) Prevention, mitigation, abatement or control of geologic hazards existing entirely on open-space property and which have neither damaged nor pose a significant threat of damage to any Site Improvements.

In performing its duties as described above, the GHAD may seek reimbursements from public and private entities including, but not limited to, FEMA, City and County agencies, insurance companies, etc.

9.0 MAINTENANCE AND MONITORING SCHEDULE

Geologic features and GHAD-maintained facilities, including Easements “M” and “TBD”, should be inspected by GHAD staff or GHAD-assigned consultants as presented below. The site inspections should be undertaken at appropriate intervals as determined by the GHAD Manager using supporting documents prepared for Tract 7620 and the Site Improvements. The GHAD budget should provide for three or more inspections in years of heavy rainfall. Generally, the inspections should take place in October, prior to the first significant rainfall; mid-winter as necessary during heavy rainfall years; and in early April at the end of the rainy season. The frequency of the inspections should increase, depending upon the intensity and recurrence of rainfall.

The GHAD shall obtain copies of geologic or geotechnical exploration reports related to site development and keep these reports on file in the records of the GHAD. In addition, copies of any earthwork-related testing and observation reports that will be finalized at the completion of grading, when as-built drawings are available, shall be maintained as part of the GHAD records.

Following are guidelines for a monitoring plan. The actual timing, scope, frequency and other details regarding such maintenance, inspection and similar activities shall be at the discretion of the GHAD Manager.

- A State-licensed Professional Engineer and/or Professional Geologist should carry out a geologic reconnaissance of the slopes for indications of erosion or slope failures. Open space slope area monitoring would include observation of debris benches. The removal of accumulated debris from the bench, including rockfall material, should be undertaken in a manner that maintains the capacity of the bench to protect Site Improvements.
- A State-licensed Professional Engineer and/or Professional Geologist retained by the District should carry out an inspection of lined surface ditches. Repairs and maintenance, as needed, should be undertaken including removal of excess silt or sediment in ditches and patching or replacement of cracked or broken ditches, prior to the beginning of the next rainy season.
- Subsurface drain outlets and horizontal drilled drain outlets, if any, should be checked. Water flowing from these outlets should be measured and recorded during each inspection.

- Piezometers to measure groundwater levels, or instruments such as inclinometers or tiltmeters measuring potential slope instability should be monitored as recommended, if installed.
- Settlement monitoring devices, if any, should be measured periodically and tracked. In the event of anomalous readings or excessive settlement, the monitoring frequency should be increased.
- Inlets, outfalls or trash racks, if used, must be kept free of debris and spillways maintained. Additionally, water detention facilities and water quality facilities should be inspected and maintained. It is anticipated that initially at least once every two (2) years, cleanup of vegetation and removal of silt would be in order. Attention should be given to plantings or other obstructions which may interfere with access by power equipment.
- Monitoring of the paved and unpaved trail system should include observing the trail for excess vegetation growth, eroded areas or areas of instability.
- Retaining walls should be inspected for evidence of distress, such as tilting and/or structural failure. Repairs and maintenance would be undertaken only in the event that the structural integrity of the wall has been compromised or if the wall distress poses a threat to the integrity of adjacent structures.
- The water quality/detention basins and associated improvements should be monitored on a semi-annual basis; once prior to and once following the rainy season. Repairs and maintenance, as needed, should be undertaken, including removal of excess silt or sediment. Monitoring of the pond/basin access roads should include observing the access road for eroded areas or areas of instability, pavement competency, and encroaching vegetation.
- An annual inspection shall be made by a State-licensed Professional Engineer and/or Certified Engineering Geologist to assess the effectiveness of the preventive maintenance program and to make recommendations as to which landslide or erosion measures should be undertaken in the next fiscal year. Any appropriate site-specific study of landslide or erosion conditions shall be determined at that time. Consultants, if necessary, will be retained to undertake the needed studies. An annual inspection report to the GHAD shall be prepared by the Professional Engineer and/or Certified Engineering Geologist.

10.0 RIGHT-OF-ACCESS

District officers, employees, consultants, contractors, agents, and representatives shall have the right to enter upon all lands within the GHAD Boundary as shown on Appendix B, Exhibit A, for the purpose of performing the activities described in this Plan of Control. Such activities include, but are not limited to: (1) the inspection, maintenance and monitoring of those improvements listed in Section 7.0; (2) the monitoring, maintenance and repair of slopes, including repaired or partially repaired landslides; and (3) the management of erosion and

geologic hazards within the open space areas shown on Appendix B, Exhibit A. Should the District need to access private residential lots to fulfill its duties under the Plan of Control, the District shall provide the affected landowner and/or resident with 72 hours advanced notice unless, in the reasonable judgment of the District, an emergency situation exists which makes immediate access necessary to protect the public health and safety, in which case no advanced notice is required, but the District shall inform the landowner and/or resident as soon as reasonably possible.

The foregoing right-of-entry provision shall be recorded in the chain of title for all Tract 7620 residential parcels and common area lots, and it shall be included in all Covenants, Conditions and Restrictions (CC&Rs) and homebuyer disclosure statements prepared for parcels within the GHAD Boundary, but not on Easements "M" and "TBD". A sample right-of-entry disclosure statement is included in Appendix C.

DRAFT

SELECTED REFERENCES

1. Berlogar Geotechnical Consultants, Geotechnical Investigation, 1999 Reclamation Plan, La Vista Quarry, Hayward, California; January 14, 2000; Project No. 1692.011.
2. Berlogar Geotechnical Consultants, Fault Investigation Report La Vista Quarry, Hayward, California, February 29, 2000.
3. Berlogar Geotechnical Consultants, Report Fault Investigation Marcotte Property, Alquire Parkway, Hayward, California, December 3, 2001.
4. Berlogar Geotechnical Consultants, Supplemental Fault Investigation Report, La Vista Quarry, Hayward, California, December 3, 2001.
5. Berlogar Geotechnical Consultants, Design Level Geotechnical Report Reclamation Plan Modifications, Hayward, California, April 7, 2004.
6. Berlogar Geotechnical Consultants, Geotechnical Recommendations, Reclamation Plan Modifications, La Vista Quarry Development, La Vista Quarry and Marcotte Property, Hayward, California, Volumes 1 through 3 March 24, 2005.
7. Berlogar Geotechnical Consultants, Overexcavation Plan, La Vista Quarry Development, La Vista Quarry, Hayward, California, November 9, 2005, revised May 2, 2006.
8. Berlogar Geotechnical Consultants, Supplemental Geotechnical Investigation, Tennyson Road Extension, La Vista Quarry Development, Hayward, California March 9, 2007.
9. Berlogar Geotechnical Consultants, Interim Report, Soil Engineering Services During Mass Grading, La Vista Residential Development, Hayward, California May 2, 2008.
10. California Division of Mines and Geology, 1982, Revised official map of Alquist-Priolo Earthquake Fault Hazard Zones, Hayward Quadrangle: California Division of Mines and Geology, scale 1:24,000
11. Dibblee, T.W. and Minch, J.A., 2005, Geologic map of the Hayward quadrangle, Contra Costa and Alameda Counties, California: Dibblee Geological Foundation, Dibblee Foundation Map DF-163, scale 1:24,000.
12. Graymer, R.W., Jones, D.L., and Brabb, E.E., 1998, Geologic map of the Hayward fault zone, Contra Costa, Alameda, and Santa Clara Counties, California: a digital database: U.S. Geological Survey, Open-File Report OF-95-597, scale 1:50,000.
13. Liekaemper, J.J., 2006, Digital database of recently active traces of the Hayward fault, California: U.S. Geological Survey, Data Series DS-177, scale 1:12,000

SELECTED REFERENCES (Continued)

14. Nilsen, T. H., 1975, Preliminary Photointerpretation Map of Landslide and Other Surficial Deposits of the Hayward 7½' Quadrangle, Alameda and Contra Costa Counties, California; USGS Open File Map 75-277-14.
15. Ruggeri-Jensen Associates, 2005, Precise Development Plan
16. Ruggeri-Jensen Associates, Grading Plans La Vista Tact 7620 June 5, 2007

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APPENDIX A

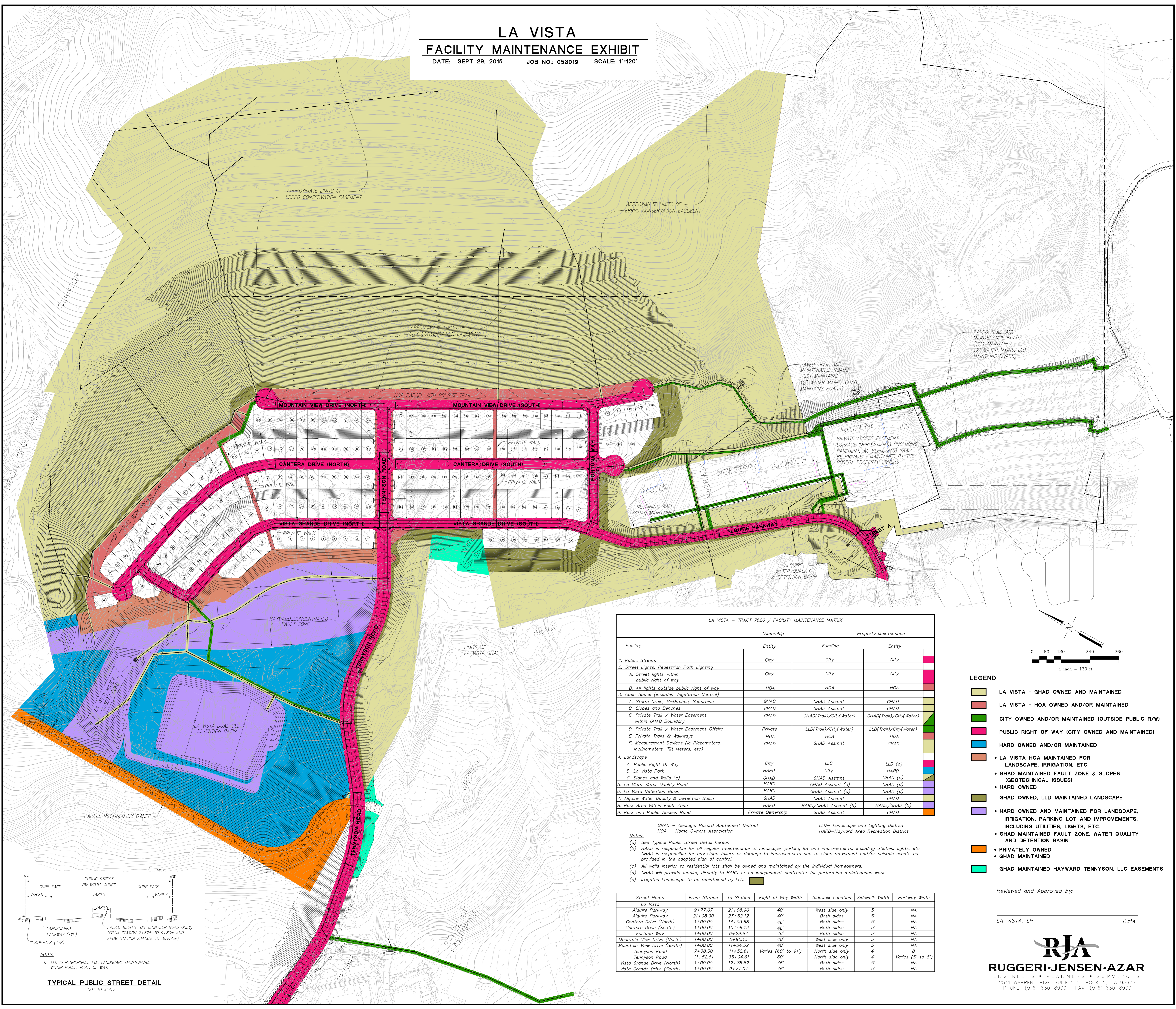
- Figure 1 Facility Maintenance Exhibit
- Figure 2 Geologic Map
- Figure 3 As-Built Subdrain Map

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LA VISTA FACILITY MAINTENANCE EXHIBIT

DATE: SEPT 29, 2015 JOB NO. 053019 SCALE: 1"=120'



LA VISTA - TRACT 7620 / FACILITY MAINTENANCE MATRIX				
Facility	Ownership		Property Maintenance	
	Entity	Funding	Entity	
1. Public Streets	City	City	City	
2. Street Lights, Pedestrian Path Lighting				
A. Street lights within public right of way	City	City	City	
B. All lights outside public right of way	HOA	HOA	HOA	
3. Open Space (includes Vegetation Control)				
A. Storm Drain, V-Ditches, Subdrains	GHAD	GHAD Assmt	GHAD	
B. Slopes and Benches	GHAD	GHAD Assmt	GHAD	
C. Private Trail / Water Easement within GHAD Boundary	GHAD	GHAD(Trail)/City(Water)	GHAD(Trail)/City(Water)	
D. Private Trail / Water Easement Offsite	Private	LLD(Trail)/City(Water)	LLD(Trail)/City(Water)	
E. Private Trails & Walkways	HOA	HOA	HOA	
F. Measurement Devices (ie Piezometers, Inclinometers, Tilt Meters, etc)	GHAD	GHAD Assmt	GHAD	
4. Landscape				
A. Public Right Of Way	City	LLD	LLD (a)	
B. La Vista Park	HARD	City	HARD	
C. Slopes and Walls (c)	GHAD	GHAD Assmt	GHAD (e)	
5. La Vista Water Quality Pond	HARD	GHAD Assmt (d)	GHAD (d)	
6. La Vista Detention Basin	HARD	GHAD Assmt (d)	GHAD (d)	
7. Alquire Water Quality & Detention Basin	GHAD	GHAD Assmt	GHAD/GHAD	
8. Park Area Within Fault Zone	HARD	HARD/GHAD Assmt (b)	HARD/GHAD (b)	
9. Park and Public Access Road	Private Ownership	GHAD Assmt	GHAD	

GHAD - Geologic Hazard Abatement District
 HOA - Home Owners Association
 LLD - Landscape and Lighting District
 HARD - Hayward Area Recreation District

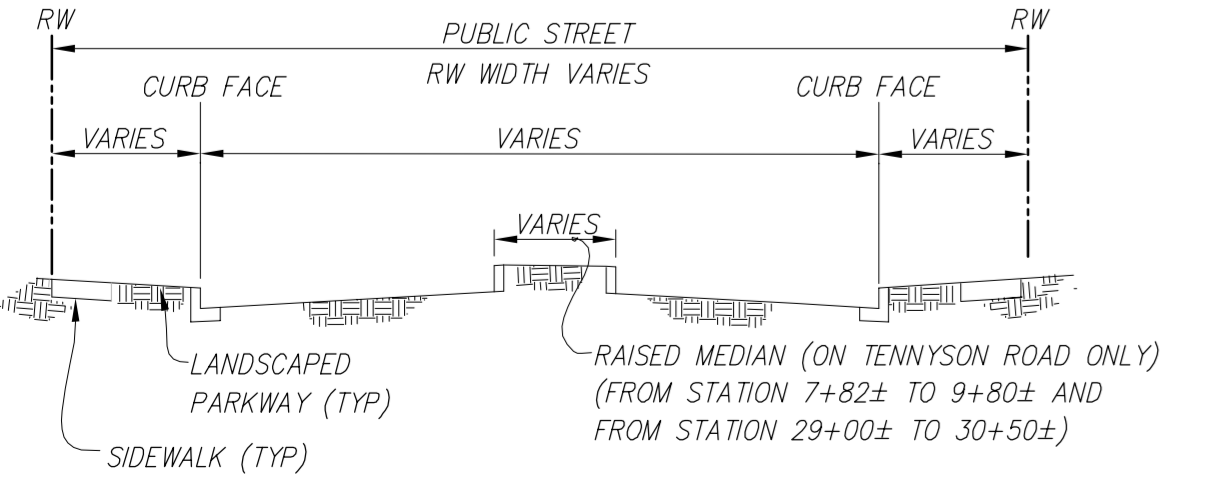
Notes:
 (a) See Typical Public Street Detail hereon
 (b) HARD is responsible for all regular maintenance of landscape, parking lot and improvements, including utilities, lights, etc. GHAD is responsible for any slope failure or damage to improvements due to slope movement and/or seismic events as provided in the adopted plan of control.
 (c) All walls interior to residential lots shall be owned and maintained by the individual homeowners.
 (d) GHAD will provide funding directly to HARD or an independent contractor for performing maintenance work.
 (e) Irrigated Landscape to be maintained by LLD.

Street Name	From Station	To Station	Right of Way Width	Sidewalk Location	Sidewalk Width	Parkway Width
Alquire Parkway	9+77.07	21+08.90	40'	West side only	5'	NA
Alquire Parkway	21+08.90	23+52.12	40'	Both sides	5'	NA
Cantera Drive (North)	1+00.00	14+03.68	46'	Both sides	5'	NA
Cantera Drive (South)	1+00.00	10+56.13	46'	Both sides	5'	NA
Fortuna Way	1+00.00	6+29.97	46'	Both sides	5'	NA
Mountain View Drive (North)	1+00.00	5+90.13	40'	West side only	5'	NA
Mountain View Drive (South)	1+00.00	11+84.52	40'	West side only	5'	NA
Tennyson Road	7+38.30	11+52.61	Varies (60' to 91')	North side only	4'	8'
Tennyson Road	11+52.61	35+94.61	60'	North side only	4'	Varies (5' to 8')
Vista Grande Drive (North)	1+00.00	12+78.82	46'	Both sides	5'	NA
Vista Grande Drive (South)	1+00.00	9+77.07	46'	Both sides	5'	NA

- LEGEND**
- LA VISTA - GHAD OWNED AND MAINTAINED
 - LA VISTA - HOA OWNED AND/OR MAINTAINED
 - CITY OWNED AND/OR MAINTAINED (OUTSIDE PUBLIC R/W)
 - PUBLIC RIGHT OF WAY (CITY OWNED AND MAINTAINED)
 - HARD OWNED AND/OR MAINTAINED
 - LA VISTA HOA MAINTAINED FOR LANDSCAPE, IRRIGATION, ETC.
 - GHAD MAINTAINED FAULT ZONE & SLOPES (GEOTECHNICAL ISSUES)
 - HARD OWNED
 - GHAD OWNED, LLD MAINTAINED LANDSCAPE
 - HARD OWNED AND MAINTAINED FOR LANDSCAPE, IRRIGATION, PARKING LOT AND IMPROVEMENTS, INCLUDING UTILITIES, LIGHTS, ETC.
 - GHAD MAINTAINED FAULT ZONE, WATER QUALITY AND DETENTION BASIN
 - PRIVATELY OWNED
 - GHAD MAINTAINED
 - GHAD MAINTAINED HAYWARD TENNYSON, LLC EASEMENTS

Reviewed and Approved by:

LA VISTA, LP Date



NOTES:
 1. LLD IS RESPONSIBLE FOR LANDSCAPE MAINTENANCE WITHIN PUBLIC RIGHT OF WAY.

TYPICAL PUBLIC STREET DETAIL
NOT TO SCALE

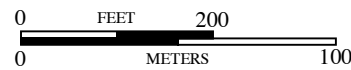
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EXPLANATION

ALL LOCATIONS ARE APPROXIMATE

 AS-BUILT SUBDRAIN

BASE MAP SOURCE: BERLOGAR



AS-BUILT SUBDRAIN PLAN
 LA VISTA QUARRY
 HAYWARD, CALIFORNIA

PROJECT NO.: 6671.150.001
SCALE: AS SHOWN
DRAWN BY: DLB CHECKED BY: PJS

FIGURE NO.

3

ORIGINAL FIGURE PRINTED IN COLOR

APPENDIX B

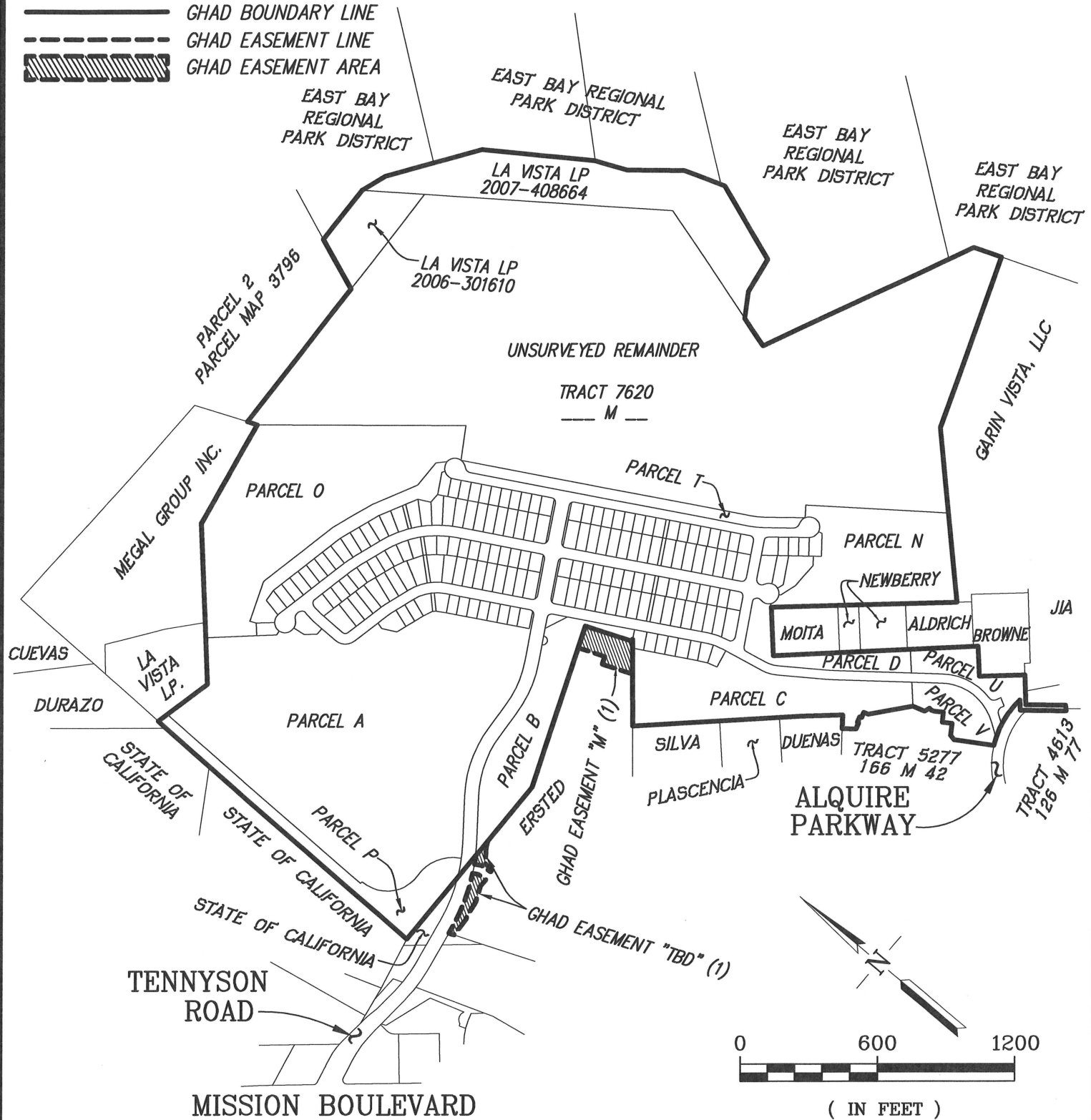
Exhibit A – Plat and Legal Description for GHAD Boundary

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LEGEND

-  GHAD BOUNDARY LINE
-  GHAD EASEMENT LINE
-  GHAD EASEMENT AREA



(1) HAYWARD TENNYSON, LLC EASEMENTS MAINTAINED BY THE HAYWARD GHAD.

SHEET 1 OF 3 SHEETS

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EXHIBIT A
PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
GEOLOGIC HAZARD
ABATEMENT DISTRICT
CITY OF HAYWARD, ALAMEDA COUNTY, CALIFORNIA



RUGGERI-JENSEN-AZAR

ENGINEERS ■ PLANNERS ■ SURVEYORS
 4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
 PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:
 1" = 600'

DATE:
 09-30-2015

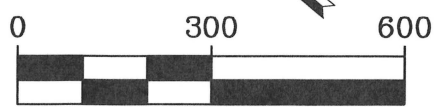
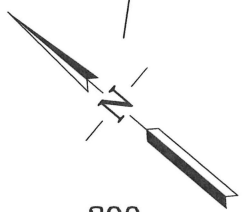
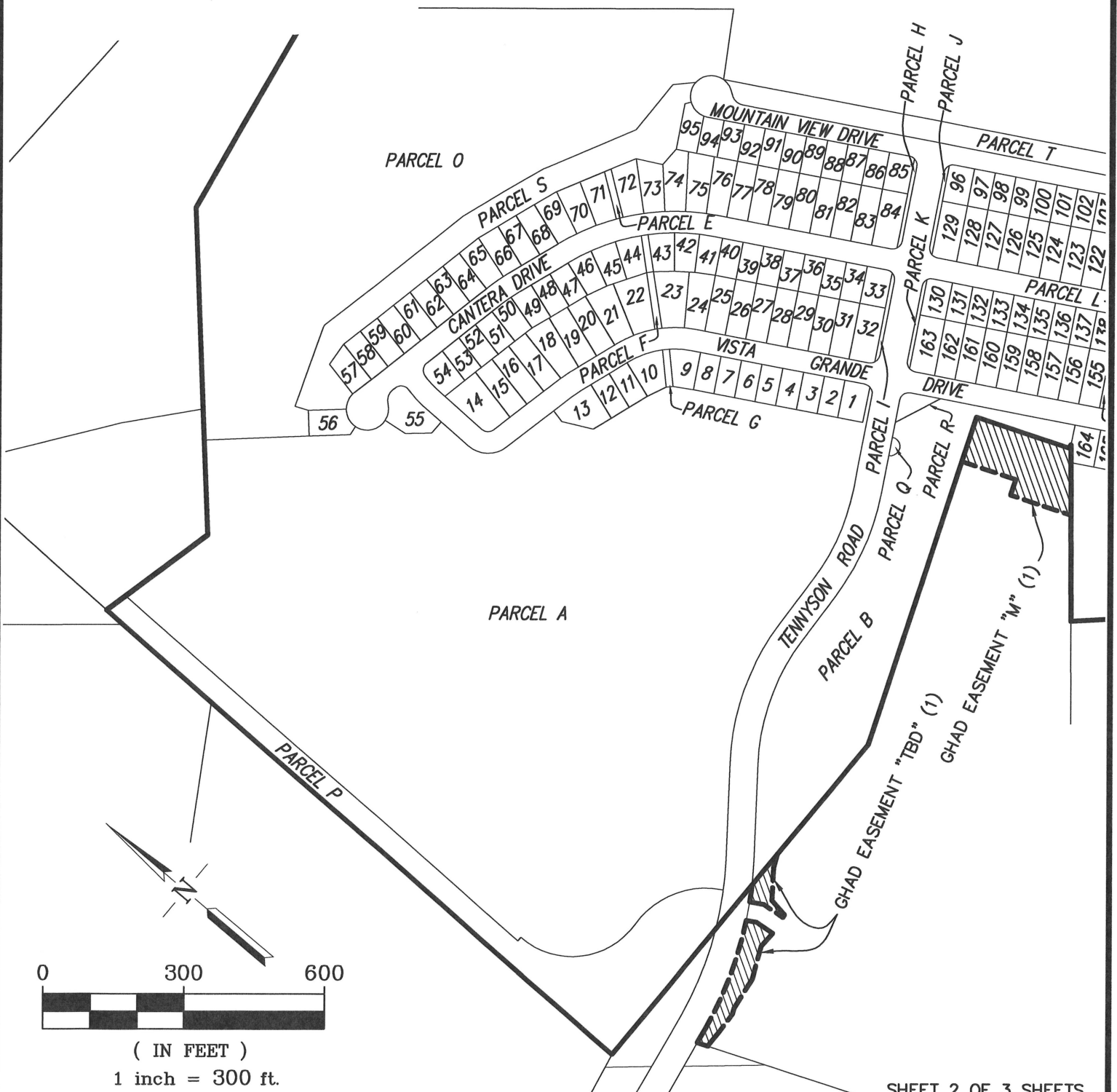
JOB NO.:
 053019

LEGEND

-  GHAD BOUNDARY LINE
-  GHAD EASEMENT LINE
-  GHAD EASEMENT AREA

UNSURVEYED REMAINDER

TRACT 7620
— M —



(IN FEET)
1 inch = 300 ft.

SHEET 2 OF 3 SHEETS

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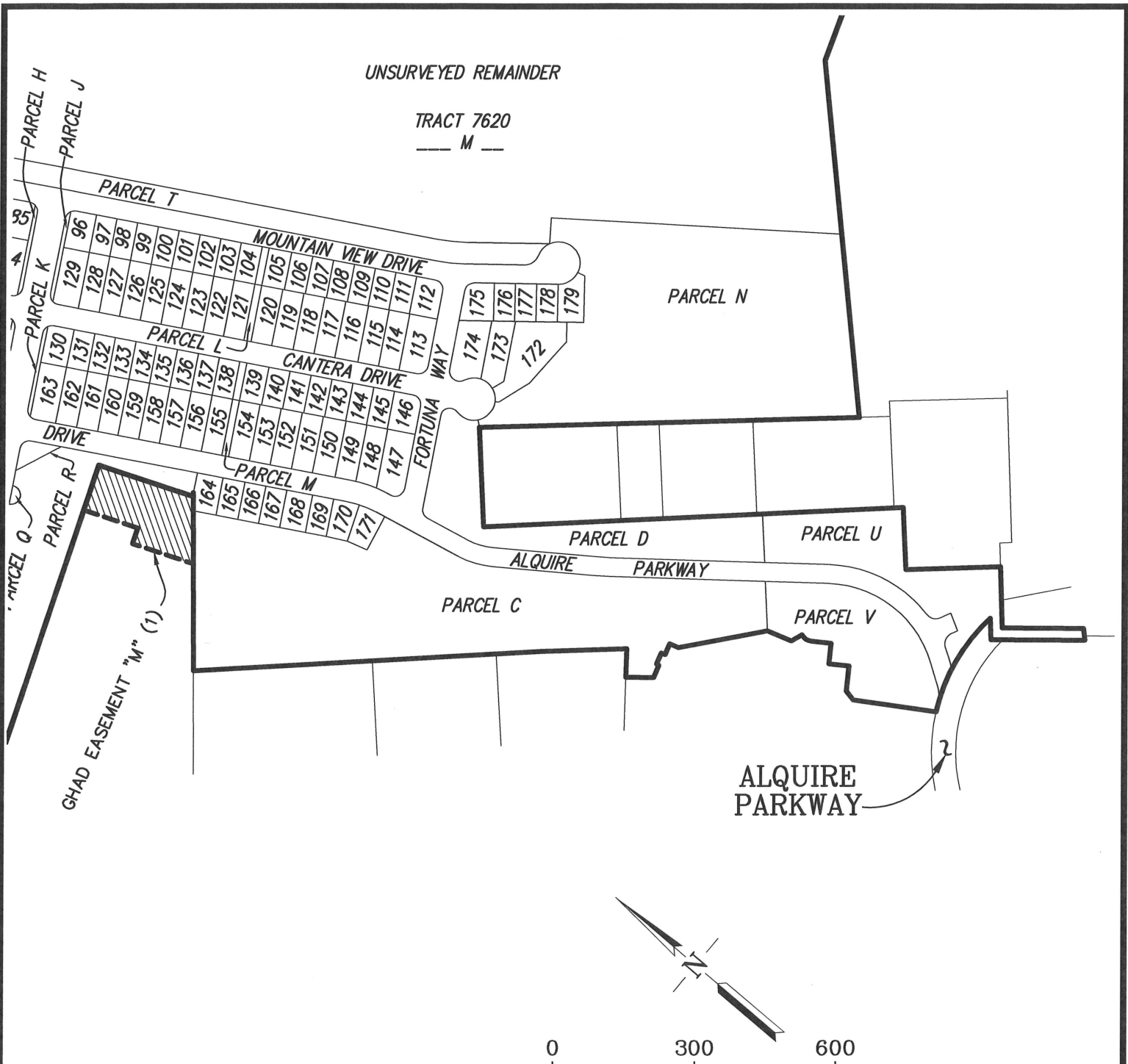
EXHIBIT A
PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
GEOLOGIC HAZARD
ABATEMENT DISTRICT
CITY OF HAYWARD, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
 ENGINEERS ■ PLANNERS ■ SURVEYORS
 4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
 PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:
1" = 300'

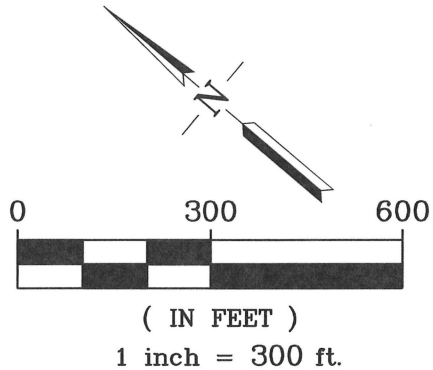
DATE:
09-30-2015

JOB NO.:
053019



LEGEND

-  GHAD BOUNDARY LINE
-  GHAD EASEMENT LINE
-  GHAD EASEMENT AREA



SHEET 3 OF 3 SHEETS

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EXHIBIT A
PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
GEOLOGIC HAZARD
ABATEMENT DISTRICT
CITY OF HAYWARD, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
 ENGINEERS ■ PLANNERS ■ SURVEYORS
 4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
 PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE: 1" = 300'	DATE: 09-30-2015	JOB NO.: 053019
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EXHIBIT "A"

Real Property situate in the City of Hayward, County of Alameda, and State of California; and being all of Lots 1 thru 179 & all of Parcels A thru V as created by that certain map entitled "Tract 7620" and filed on _____ and recorded in Book _____ of Maps at pages ___ through ___, Official Records of said County, and all of the certain parcel described as Parcel Two in a Grant Deed to La Vista L.P. recorded on August 7, 2006 under document number 2006-301610 Official Record of said County, and all of that certain parcel of land described in the Grant Deed to La Vista L.P. recorded on November 30, 2007 under document number 2007-408664 Official Records of said County.

End of Description

Prepared by:

Scott A. Shortlidge, L.S. 6441

Date

DRAFT

APPENDIX C

Hayward Geologic Hazard Abatement District GHAD Disclosure and Right of Access



Restrictive Covenant, Right of Entry and Disclosures relating to the La Vista Development within the Hayward Geologic Hazard Abatement District.

1. **Property.** The following “Right of Entry and Disclosures” regarding a Geologic Hazard Abatement District shall be recorded against all land within Tract _____ as filed on _____ in Book ____ of Maps at Pages _____, Official Records of the County of Alameda, State of California (“Property”).
2. **Geologic Hazard Abatement District.** Under authority of the California Public Resources Code Sections 26500 et seq., the Hayward City Council on _____, adopted Resolution _____ forming the Hayward Geologic Hazard Abatement District (“GHAD”) to, among other purposes, establish a fund for maintenance of geotechnical improvements and a reserve fund in the event of a geologic-related failure of open-space slopes.
3. **Property Access.** All owners of Property and successors in interest grant the GHAD and its officials, employees, contractors, and agents access to the Grantor’s property for the furtherance of the purposes of the GHAD.
4. **Binding.** These covenants and conditions are binding on all owners of the Property and their successors in interest.
5. **Deed Statement.** Any conveyance of all or a portion of the Property shall state on the deed “This conveyance is made subject to the Restrictive Covenant, Right of Entry and Disclosures Regarding a Geologic Hazard Abatement District recorded in Official Records of the Alameda County Recorder’s Office as Instrument No. _____ on the ____ day of _____, 2____ in Book ____ of Maps at Pages _____.”
6. **GHAD Enforcement.** The GHAD has the right but not the obligation to enforce this “Right of Entry and Disclosures.”
7. **Modification or Termination.** This Restrictive Covenant, Right of Entry and Disclosures shall not be modified or terminated without the written consent of the GHAD.
8. **Declarant.** This Restrictive Covenant, Right of Entry and Disclosures is made by La Vista, L.P., the owner of all lands within the Final Map for the La Vista Project.

APPENDIX D

Permanent Easement Agreements “M” and “TBD”

HAYWARD CITY COUNCIL

RESOLUTION NO. 16-016

Introduced by Council Member Peixoto

RESOLUTION SETTING A PUBLIC HEARING FOR
MARCH 1, 2016 TO CONSIDER FORMATION OF THE
LA VISTA GEOLOGIC HAZARD ABATEMENT
DISTRICT (GHAD)

WHEREAS, on November 17, 2015 , the Hayward City Council adopted Resolution 15-224 declaring that the City is subject to the provisions of the GHAD Law and directed the City Clerk to forward a copy of this resolution to the State Controller; and

WHEREAS, the City has conditioned the La Vista development to be included within a GHAD; and

WHEREAS, the La Vista development property owner has filed a Petition requesting that a GHAD be formed, the territory proposed to be included in the GHAD for the La Vista development is identified in the boundary map attached as Exhibit A to the associated Petition, and in the legal description attached to the Petition as Exhibit B; and

WHEREAS, the City Council has reviewed the draft Hayward GHAD Plan of Control for the La Vista development, which is attached to the Petition as Exhibit C. The draft Plan of Control describes potential geologic hazards within the territory to be included in the Hayward GHAD for the La Vista development and addresses the prevention, mitigation, abatement and control of such hazards.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby determines that:

1. This resolution is adopted pursuant to the provisions of Division 17 (Section 26500 et seq.) of the California Public Resources Code with particular reference to Chapter 1 (commencing with Section 26500), Article 3 (commencing with Section 26550) and Article 4 (commencing with Section 26561).
2. The City Council has been presented with and reviewed the attached draft Hayward GHAD Plan of Control for the La Vista development, and has determined that the health, safety and welfare of the public requires inclusion of the La Vista territory into a GHAD.

3. A public hearing on a GHAD Resolution for Formation will be held on March 1, 2016, at 7:00 p.m. at Hayward City Hall, located at 777 B Street, Hayward, California.
4. The City Clerk shall mail, by first class mail, a written notice of the March 1 public hearing on the formation of the Hayward Geologic Hazard Abatement District for the La Vista development, along with a copy of the draft GHAD Plan of Control, to all owners of real property within the proposed district pursuant to Public Resources Code Sections 26561, 26562 and 26563. This notice must be mailed at least twenty (20) days preceding the March 1, 2016 public hearing date.
5. These proceedings are exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Public Resources Code Section 21080(b)(4) which provides an exemption from the California Environmental Quality Act for specific actions necessary to prevent an emergency.

IN COUNCIL, HAYWARD, CALIFORNIA February 2, 2016


ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Zermefio, Mendall, Jones, Peixoto, Lamnin, Márquez
MAYOR: Halliday


NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST: 
City Clerk of the City of Hayward

APPROVED AS TO FORM:


City Attorney of the City of Hayward

**NOTICE OF PUBLIC HEARING REGARDING AN APPROVED RESOLUTION BY
THE HAYWARD CITY COUNCIL TO CONSIDER FORMATION OF THE HAYWARD
GEOLOGIC HAZARD ABATEMENT DISTRICT**

YOU ARE HERBY NOTIFIED THAT on March 1, 2016 at 7:00 p.m. in the Council Chambers of the City of Hayward, at 777 B Street, Hayward, California 94541, the Hayward City Council will hold a public hearing to consider a resolution to form the Hayward Geologic Hazard Abatement District (GHAD) pursuant to Division 17 (commencing with Section 26500) of the California Public Resources Code.

The purpose of the public hearing will be for the Hayward City Council to receive and consider all objections to the proposed formation of the Hayward GHAD proposed to include the La Vista development.

A copy of Hayward City Council Resolution 16-016, which includes the Hayward GHAD Plan of Control, is enclosed for your review. Additional copies of the proposed Hayward GHAD Plan of Control are available for review and copying, at a cost not to exceed the cost of duplication, at 777 B Street, Hayward, California 94541.

Objections to the proposed formation may be made by any owner of real property proposed to be within the Hayward GHAD. In order to be considered, objections must be in writing, containing a description of the owner's land by lot, tract and map number; contain the signature of the owner; and be mailed or otherwise deliver to the address set forth below prior to the time set for the hearing. Objections not received by the close of business on March 1, 2016, should be presented at the hearing. If the person whose signature appears on the written objection is not shown on the assessment roll last equalized by the county as the owner of the subject real property, the written objection must be accompanied by evidence sufficient to indicate that such person is the owner of such property.

Contact for information or written objections:
Peter Rei, Contract Development Review Engineer
City of Hayward
777 B Street, Hayward, California 94541
Phone: (510) 583-4411
Email: peter.rei@hayward-ca.gov

GEOLOGIC HAZARD ABATEMENT DISTRICTS (GHADS)

PREPARED BY THE CALIFORNIA ASSOCIATION OF GEOLOGIC HAZARD ABATEMENT DISTRICTS

June 2011

1. What is a GHAD?

Geologic Hazard Abatement Districts (GHADs) are governmental districts formed to address geologic hazards. GHADs may be formed for the purpose of prevention, mitigation, abatement or control of a geologic hazard and can also be formed for mitigation or abatement of structural hazards that are partly or wholly caused by geologic hazards. (Public Resources Code [*Pub. Res. Code*] § 26525.) A “geologic hazard” is broadly defined as an actual or threatened landslide, land subsidence, soil erosion, earthquake, fault movement or any other natural or unnatural movement of land or earth. (*Pub. Res. Code* §§ 26507.)

2. History of GHADs

In 1979, the California State Legislature adopted the GHAD Law (*Pub. Res. Code* §§ 26500 - 26654) in response to the Portuguese Bend landslides in the Palos Verdes area of Los Angeles County. The GHAD law was authored by then State Senator Robert Beverly. This law gives local agencies the authority to form districts that could speedily address “an actual or threatened landslide, land subsidence, soil erosion, earthquake, or any other natural or unnatural movement of land or earth.” (*Pub. Res. Code* § 26507). The first GHAD was formed in 1981 in the Portuguese Bend area to arrest a slide and prevent homes from sliding into the Pacific Ocean.

To date, we are aware of 40 GHADs (or similar districts) that have been formed throughout the State to reduce the risk of, and when necessary abate damage caused by, landslides, land subsidence, coastal erosion and similar geologic hazards.

3. GHAD Powers

A GHAD is a political subdivision of the State. It is not an agency or instrumentality of a local agency. (*Pub. Res. Code* §§ 26525, 26570.) As such, GHADs perform certain governmental and proprietary functions as a political subdivision of the State. (*Pub. Res. Code* § 26571.)

A GHAD is governed by an elected board consisting of landowners within the district or the members of the applicable city council or board of supervisors. (*Pub. Res. Code* §§ 26567, 26583.) GHADs are authorized to acquire, construct, operate, manage or maintain improvements on public or private lands. Under GHAD Law, “improvement” means any activity that is necessary or incidental to the prevention, mitigation, abatement, or control for a

geologic hazard, including, without limitation, construction, maintenance, repair or operation of any improvement. (*Pub. Res. Code § 26505.*) GHADs may exercise the power of eminent domain. (*Pub. Res. Code § 26576.*)

In considering the formation of a GHAD, a plan of control must be prepared that describes the geologic hazards and includes a plan for prevention, mitigation, abatement and control of these hazards. This plan of control must be prepared by a Certified Engineering Geologist. The plan of control is considered by the legislative body in forming the GHAD and sets out the activities to be implemented by the GHAD.

4. Lands Included in a GHAD

There is no limitation on the number of acres that can be included in a GHAD. A GHAD may include lands in more than one local agency (city or county) and the lands may be publicly or privately owned. (*Pub. Res. Code §§ 26531, 26532.*) The lands comprising the GHAD need not be contiguous so long as all lands included within a district are specially benefited by the proposed construction to be undertaken by the GHAD in the plan of control. (*Pub. Res. Code §§ 26530, 26534.*) However, no parcel of real property shall be divided by the boundaries of the proposed district. (*Pub. Res. Code § 26533.*)

Land may be annexed to an existing GHAD following the procedures for formation of a GHAD; however, the GHAD board of directors assumes the responsibilities of the legislative body of the city or county in this annexation. Annexation is subject to the approval of the legislative body which ordered formation of the GHAD. (*Pub. Res. Code § 26581.*)

5. GHAD Financing

GHADs have numerous funding powers that allow them to finance improvements consistent with the plan of control. A GHAD's primary source of funding is through land owner assessments. (*Pub. Res. Code § 26650.*) These assessments, which attach as liens on property, may be collected at the same time in the same manner as general taxes on real property. (*Pub. Res. Code § 26654.*) All assessment proceedings must also comply with Proposition 218 adopted by the voters in 1996, the "Right to Vote on Taxes Act." (Arts. XIIC and XIID of the California Constitution.)

A GHAD is also authorized to finance improvements through the California Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Improvement Bond Act of 1915. (*Pub. Res. Code § 26587.*) In addition, a GHAD may accept financial or other assistance from public or private sources (*Pub. Res. Code § 26591*) and may borrow funds from private sources or local, state and federal government. (*Pub. Res. Code § 26593.*)

6. General Formation Process for GHADS

Notwithstanding any other provision of law, proceedings for GHAD formation are exclusive. (*Pub. Res. Code § 26560.*) Under State law, GHAD formation is exempt from both the need for approval by the Local Agency Formation Commission (LAFCO) (see *Las Tunas Beach Geologic Hazard Abatement District v. Superior Court (City of Malibu)*, 38 Cal. App. 4th 1002 (1995)) and from review under the California Environmental Quality Act (CEQA). (*Pub. Res. Code*

§ 26559.) Also, improvements caused to be undertaken under the GHAD Law and all activities in furtherance or in connection therewith are exempt from review under CEQA. (Pub. Res. Code § 26601.)

The following are the processes that must be taken in forming a GHAD.

- a. Before a GHAD can be formed, the local agency must adopt a resolution declaring that it is subject to the GHAD Law and forward this resolution to the State Controller. (*Pub. Res. Code* § 26550.)
- b. A plan of control must be prepared by a Certified Engineering Geologist. The plan must describe geologic hazards, their location, the GHAD boundaries, and include a plan for prevention, mitigation, abatement and control of these hazards. (*Pub. Res. Code* § 26509.) The plan should also identify the activities that are not covered by the GHAD such as individual drainage systems. The plan is the basic document that addresses the GHAD's ongoing activities, including the monitoring of geologic conditions, identification of geologic hazards, construction of needed improvements, and the maintenance, repair and replacement to facilities. (*Pub. Res. Code* §§ 26509 et. seq.) The plan is required to be attached to the formation petition and, thus, is before the public and the legislative body throughout the petition, protest, hearing and decision making stages.
- c. Proceedings for the formation of a GHAD may be initiated by either (a) a petition signed by the owners of at least 10 percent of the property within the proposed GHAD (*Pub. Res. Code* §§ 26552, 26554); or (b) resolution of the legislative body. (*Pub. Res. Code* § 26558.)
- d. The legislative body adopts a resolution setting a hearing and noticing by mail the owners of real property to be included within the proposed GHAD boundaries. These property owners may object to formation. (*Pub. Res. Code* § 26564.) If it appears at the time of the hearing that owners of more than 50 percent of the assessed valuation of the GHAD area object, the proceedings must be abandoned. (*Pub. Res. Code* § 26566.) The legislative body closes the public hearing and decides whether or not to form a GHAD. The legislative body must determine within 60 days of the close of the formation hearing whether to order formation. (*Pub. Res. Code* § 26567.)
- e. If the legislative body orders formation, it must also select an initial board of directors for the GHAD. The legislative body may either select five landowners from the GHAD area or select itself. If the legislative body selects five landowners, the initial term shall be four years; after that, the landowners GHAD board shall be elected from the new GHAD. (*Pub. Res. Code* §§ 26567, 26583.) Otherwise, the legislative body stays as the governing body if it selects itself.
- f. Before a GHAD can operate, the board of directors must pass a budget, appoint officers and if appropriate, levy an assessment. Proposition 218 makes it more time consuming and procedurally complex to levy an assessment.

7. Benefits in Forming GHAD

GHADS offer many benefits. First, through a plan of control GHADs act to prevent damage resulting from earth movement by identifying and monitoring potential geologic hazards and undertaking improvements as appropriate.

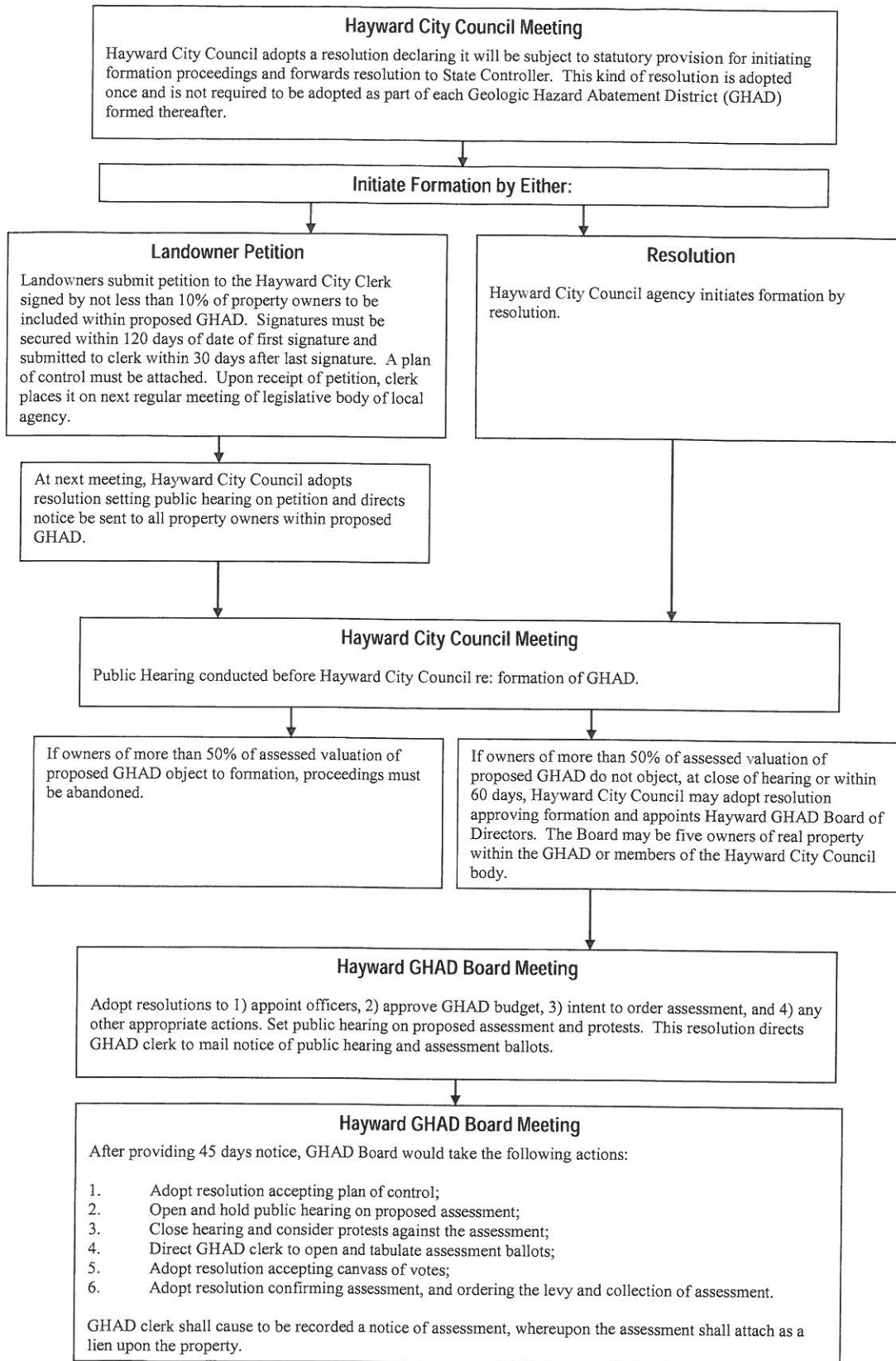
Second, a GHAD can quickly respond to a geologic hazard if one occurs due to its funding capability and technical expertise through the plan of control.

Third, a GHAD assessment can be easily collected since the assessment can be collected along with the general property tax. This avoids requiring separate collection by a private entity, such as a homeowners' association.

Fourth, GHADs are provided a degree of immunity from liability for actions they undertake. (Government Code § 865.) This degree of limited liability encourages the formation of GHADs and to pursue remedial action to abate the hazard.

Disclaimer: The materials provided are for informational purposes only, and are not offered as, and do not constitute engineering or legal advice or legal opinions and do not form a professional services relationship. Due to the changing nature of this area and the importance of individual facts, readers should not act or rely upon the information without seeking the advice of a lawyer. For more information please contact the California Association of Geologic Hazard Abatement Districts. Barbara Mahoney @ (925) 395-2537

HAYWARD GHAD (LA VISTA DEVELOPMENT) OUTLINE OF GHAD FORMATION PROCESS



HAYWARD CITY COUNCIL

RESOLUTION NO. 15-224

Introduced by Council Member Mendall

RESOLUTION DECLARING THAT THE CITY OF
HAYWARD IS SUBJECT TO THE GEOLOGIC
HAZARD ABATEMENT DISTRICT (GHAD) LAW

WHEREAS, Division 17 (Section 26500 et seq.) of the California Public Resources Code (“GHAD Law”) permits the formation and operation of geologic hazard abatement districts (GHADs) within the City of Hayward (“City”) provided that the legislative body of the City has adopted a resolution declaring that it is subject to the provisions of the GHAD Law; and

WHEREAS, the City has conditioned the La Vista development to be included within a GHAD, and

WHEREAS, the City may, in the future, desire to consider the inclusion of other proposed residential developments into GHADs;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby orders that:

1. The City of Hayward is subject to the provisions of the GHAD Law.
2. The City Clerk is directed to forward a copy of this Resolution to the State Controller.
3. The City Council finds and determines that this Resolution is exempt from the California Environmental Quality Act (“CEQA”) and the City Clerk is directed to cause to be filed a Notice of Exemption with the Alameda County Clerk and the State Office of Planning and Research on the basis that this Resolution is not considered a “project” under CEQA.

IN COUNCIL, HAYWARD, CALIFORNIA November 17, 2015

ADOPTED BY THE FOLLOWING VOTE:

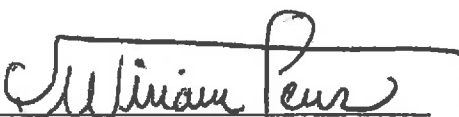
AYES: COUNCIL MEMBERS: Zermefio, Mendall, Jones, Peixoto, Lamnin, Márquez

MAYOR: Halliday


NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST: 
City Clerk of the City of Hayward

APPROVED AS TO FORM:


City Attorney of the City of Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

Staff Report

File #: PH 16-016

DATE: March 1, 2016

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT

Amendment to the La Vista Project Development Agreement requiring adoption of a Resolution and Introduction of an Ordinance to Extend its Term for Five Years and Update the Project Schedule - The Project is Located at 28816 Mission Boulevard in eastern Hayward.

RECOMMENDATION

Staff recommends that the City Council relies on the previously approved environmental documents, adopts the attached resolution (Attachment I), and introduces the attached ordinance (Attachment II) to amend the La Vista Project Development Agreement by extending its term for five years to May 26, 2021, and adjusting the project schedule, subject to making the finding, as recommended by the Planning Commission, that such amendment is consistent with the General Plan.

SUMMARY

The requested Development Agreement extension and related project schedule adjustment are related primarily to the need to off-haul material transported from the adjacent Garin Vista site several months ago related to stabilizing a hillside where a landslide occurred, and due to the stagnant housing market (see request, Attachment III). Staff is supportive of the requested amendment to the La Vista Development Agreement, because there are valid reasons for such amendment, the required finding can be made; and because there are significant public benefits associated with the Development Agreement that should be realized.

BACKGROUND

Overview of History - In July of 2003, the City Council approved the Mission-Garin Annexation Study, which identified development potential of that area, including the La Vista Quarry property. In anticipation of annexation into the City of Hayward, the properties in the study area were rezoned and an annexation application was filed with the Local Agency Formation Commission of Alameda County (LAFCO) in the fall of 2003, which was ultimately approved by LAFCO. The City Council subsequently approved in July of 2005 the 179-unit La Vista Development project, which included a Development Agreement. The City of Hayward and La Vista L.P., represented by The DeSilva Group, entered into a Development Agreement (Attachment IV), which was effective on May 26, 2006, when the development site and other properties were annexed into the City of Hayward as part of the Mission-Garin Annexation. The term of the Development Agreement is for ten years, with five-year extensions allowed with mutual

consent of the parties.

In 2007, a major landslide occurred in the foothills at the Garin Vista development site just south of the La Vista project site. DeSilva Gates, the grading company involved with the La Vista project, took approximately 800,000 cubic yards of slide material from the Garin Vista landslide (which stabilized that hillside) and transported the material to the La Vista site. Some of the landslide material was used to raise the future La Vista Park site. In the spring of 2008, additional material was off hauled from the Garin Vista site to the La Vista site in order to repair the Garin Vista landslide. A total of one million cubic yards came from the Garin Vista site in order to facilitate repair of the Garin Vista landslide. This excess soil material could not be absorbed and spread throughout the La Vista project site and attain finished grading of the development site, so off haul from the La Vista site became necessary.

In June of 2014, a grading permit was approved for off haul of 870,000 cubic yards of material to an approved project site in Fremont that needed fill material. This activity caused significant delay in moving forward with development of the 179-unit project. Also factoring into the late La Vista project start was the poor housing market. The project Development Agreement is set to expire May 26, 2016, thus the need to extend it another five years to complete the project.

2005 Project Description - In July of 2005, the 162-acre site, previously used as a surface mining operation and asphalt batch plant, was approved for a subdivision accommodating development of 179 single family residential lots and related public streets, along with a new thirty-acre community park with detention basins, a possible new community center, and associated open space and trails. The homes will be built east of the Hayward earthquake fault trace and west of a reclaimed quarry slope that extends several hundred feet up to the boundary of Garin Regional Park. One of the project conditions of approval requires formation of a geologic hazard abatement district (GHAD), which would provide funding for regular maintenance, inspections, repairs if necessary, and capital reserve funds related to the large reclaimed quarry slope and related drainage facilities. Steps are currently being taken to form a GHAD, prior to construction of any new homes.

In addition to dedication of thirty acres for a new community park, which is nearly ten times that which would be minimally required per the City's park dedication standards, the applicant will also contribute \$2.1 million toward construction of such park. Also, the proponent is required to contribute an additional \$1.5 million to help pay for development of a new community center, envisioned for an undetermined future site in the general vicinity along/near Mission Boulevard. The original 2005 tentative park design that was approved as part of the Vesting Tentative Tract Map and Planned Development zoning included only soccer and ball playfields and a series of detention basins. An enhanced park design is currently underway.

In addition to public streets proposed within the subdivision, two new public roads are proposed to serve the development: Tennyson Road, proposed to be extended eastward this spring/summer from Mission Boulevard, and a new connector road extending to Alquire Parkway.

The development would also be served by the City's public sewer and water systems. An additional 0.75 million gallon water tank adjacent to the existing 1.2 million gallon tank is required to be constructed at the Garin Reservoir site and related water system upgrades are required, including improvements to the

pump station and a new backbone piping distribution network. The City has entered into an agreement to design and construct the second water tank and the developer has paid \$300,000 as required by the terms of the agreement entered into on June 15, 2015.

In 2007, to meet the obligations for affordable housing, the applicant donated land and funded affordable housing units off-site, at the former pickle factory site at the northeast corner of Saklan Road and North Lane. Providing these off-site affordable housing units exceeds the minimum obligations (more than the required amount) for the project. Eden Housing assumed responsibility for developing the units (now is Walker Landing), consisting of 72 apartments for very low and low income households.

Current Project Status - The City Council approved the final subdivision map (Tract 7620) on June 23, 2015. The final map is ready for recordation. Staff is reviewing final architectural details associated with the proposed home designs. A residential developer will build the homes. Once this review is complete, approval of the project Precise Plan will occur allowing for submission of building permits for the project. Since the 2005 approval, reflective of the City's desire to have a destination park in this part of Hayward, the City and the developer have moved forward with an expanded park plan area that includes some adjacent CalTrans property (an old Route 238 Bypass parcel) creating a larger "destination" park serving the greater south Hayward area. La Vista LP is paying for the conceptual planning of the expanded La Vista Park and staff believes a non-General Fund source to fund the development of park improvement plans has been identified, and the park will likely be built in phases.

As for the detention basins within the park, they will serve to capture excess amounts of stormwater, especially when heavy rainfall cannot be accommodated by the drainage system, and then gradually release it into the drainage system that flows towards Mission Boulevard. At all other times, the detention basins would serve as an amphitheater. Such dual use facilities have been used in other cities in the central valley and to the east in Contra Costa County.

February 11, 2016 Planning Commission Review - The Planning Commission heard the matter at its regular meeting on February 11, 2016 and recommended unanimously that the City Council approves the requested amendment to the Development Agreement. The Commission also made the required finding that such amendment is consistent with the current General Plan and any decision to amend the agreement relies on the previously approved environmental documents for the project.

DISCUSSION

The extension would extend the term of the Development Agreement an additional five years from the date it otherwise would expire, or until May 26, 2021. The developer is in compliance with the current Development Agreement and extension of the term will facilitate completion of the project. The extension of the project Development Agreement term is consistent with the City of Hayward General Plan (further discussion of this below). The Amendment does not propose new or amended provisions which modify the development authorized under the Agreement and other City approvals, though modifications to the project schedule are proposed to be modified to reflect current status (see below and Attachment I).

The current request to amend the La Vista Development Agreement is consistent with multiple General Plan principles, goals, and policies. The development request is consistent with Guiding Principle #2, which states that “Hayward should have safe and clean neighborhoods with an expanded network of parks . . .” The approved subdivision layout incorporates “Crime Prevention Through Urban Design” creating a new safe neighborhood in the City and creation of a new park located on the western border of the subdivision. The request is also consistent with Goal 3 (Complete Neighborhoods - Land Use and Community Character Element) in that the development request creates a complete neighborhood with convenient access to La Vista Park and other community amenities such as the new community center that will be constructed nearby. Specifically pursuant to Policy LU-3.1, “the City shall promote efforts to make neighborhoods more complete by encouraging the development of a mix of complementary uses and amenities that meet the daily needs of residents.”

Construction of this development will meet this General Plan Policy through the construction of a new community park adjacent to the new neighborhood. As stipulated in the Development Agreement, the applicant will be contributing significant sums of money to construct portions of the new park and also contribute to construction of a future new community center. Policy LU-3.6 (Residential Design Strategies) encourages new residential developments to “create a highly connected block and street network,” “design new streets with wide sidewalks, planting strips, street trees, and pedestrian-scaled lighting,” and “orienting homes . . . towards streets and public spaces.” The La Vista development incorporates all of these desirable design elements outlined in this General Plan policy.

In order to approve the extension to the Development Agreement, the City Council, upon a recommendation by the Planning Commission, must make a finding that the provisions of the Development Agreement are consistent with the City of Hayward General Plan and any applicable specific plan. The proposal to extend the provision of the Development Agreement for an additional five years is consistent with the City’s General Plan, Mission-Garin Area Special Design (SD-5) District and the Hillside Design and Urban Wildland/Interface Guidelines in that Section 3 of the Development Agreement stipulates the development must be consistent with such provisions, and such section is not proposed to be amended.

The project continues pursuant to the following project schedule:

- *Mass grading completed in October 2015. Main infrastructure to start early 2016*
- *Alquire Parkway extension and Bodega improvements will start Spring 2016 and finish in 2016*
- *Complete the infrastructure for units south of Tennyson by September 2016*
- *Complete all remaining infrastructure by the end of 2016*
- *Model Construction to start in September 2016*
- *Models open by the end of 2016*
- *Production units start in October 2016*
- *First occupancies by the first quarter of 2017*
- *Construction of all residences, completion of at least La Vista Park Phase 1 and all subdivision*

improvements including the Tennyson Road and Alquire Parkway extensions by May of 2021.

Concerning environmental impacts, and specifically related to this request to extend the Development Agreement for an additional five years in an effort to complete all phases of the Project, there is no substantial change proposed in the Project or in the circumstances under which the Project is being undertaken, nor is there any new information, which would require additional environmental review.

ECONOMIC IMPACT

There is no **new** economic impact for this recommendation.

FISCAL IMPACT

There is no **new** fiscal impact for this recommendation.

PUBLIC CONTACT

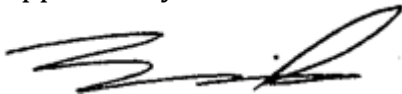
On February 20, 2016, a notice of public hearing was published in *The Daily Review* and on Monday February 22, 2016, mailed to property owners and residents within 300 feet of the La Vista development site and to the Hayward Area Recreation and Park District (HARD) staff. No responses to such notices were received when this report was finalized.

NEXT STEPS

If the Development Agreement Amendment is approved by Council, the new Agreement with a modified term and project schedule will be recorded and the construction of approved improvements will continue in accordance with the modified Development Agreement.

Prepared by: Damon Golubics, Senior Planner
Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

- | | |
|----------------|--|
| Attachment I | Draft Resolution |
| Attachment II | Draft Ordinance |
| Attachment III | Letter from Jim Summers (La Vista LP) dated February 3, 2016 |

HAYWARD CITY COUNCIL

RESOLUTION NO. 16-

Introduced by Council Member _____

RESOLUTION AUTHORIZING AMENDMENTS TO THE LA VISTA
PROJECT DEVELOPMENT AGREEMENT

WHEREAS, La Vista L.P. has requested a five-year extension of the La Vista Project Development Agreement (the "Development Agreement") and revisions to the associated schedule (the Amendment to the Development Agreement) for the project now known as La Vista Development (the "Project"); and

WHEREAS, the Development Agreement provides that the term of the agreement may be extended for an additional five years upon written agreement of the parties, and the delays in the construction of the Project creating the need for the extension were caused by national and regional economic conditions related to the housing market and use of the La Vista project site for temporary soil storage from the 2007 Garin Vista project site landslide to the south; and

WHEREAS, the City Council adopted a Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project on July 19, 2005, in conjunction with approval of the General Plan Amendment, Zone Change, Vesting Tentative Map and Development Agreement for the Project; and

WHEREAS, there has been no substantial change proposed in the Project or the circumstances under which the Project is being undertaken, nor is there any new information that would require additional environmental review; and

WHEREAS, on February 11, 2016, the Planning Commission found that the requested Amendment to the Development Agreement are consistent with the General Plan and recommended approval of the Amendment to the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby approves an Amendment to Sections 1.2.10, 1.2.25 and 7 of the Development Agreement, the full revised version of which is attached hereto as Exhibit A, subject to the adoption of the companion ordinance.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2016

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Exhibit A

RECORDING REQUESTED BY
CITY OF HAYWARD
AND WHEN RECORDED MAIL TO:

┌ City Clerk ───────────────────┐

City of Hayward

└ 777 "R" Street ───────────────────┘

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The undersigned grantor hereby declares: This instrument exempt from Recording Fees (Govt. Code §27383)
and from
Documentary Transfer Tax (Rev. and Taxation Code § 11922).

REVISED DEVELOPMENT AGREEMENT

BETWEEN
THE CITY OF HAYWARD (CITY)
AND
LA VISTA L.P., A CALIFORNIA LIMITED PARTNERSHIP

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Govt. Code 27361.6)

REVISED DEVELOPMENT AGREEMENT
BY AND BETWEEN
LA VISTA L.P., A CALIFORNIA LIMITED
PARTNERSHIP
AND
THE CITY OF HAYWARD

TABLE OF CONTENTS

1. SECTIONS; DEFINITIONS AND EXHIBITS..... 6

2. MUTUAL BENEFITS AND ASSURANCES. 12

3. OWNER’S OBLIGATIONS; PROVISION OF PUBLIC BENEFITS..... 12

4. REGULATIONS GOVERNING THE DEVELOPMENT OF THE PROPERTY AND
OTHER CITY OBLIGATIONS. 15

5. PERIODIC REVIEWS. 21

6. TRANSFERS AND ASSIGNMENTS. 21

7. TERM OF AGREEMENT..... 23

8. AMENDMENT..... 23

9. PROCESSING OF REQUESTS AND APPLICATION; OTHER GOVERNMENT
PERMITS..... 24

10. DEFAULT AND REMEDIES..... 25

11. THIRD PARTY LITIGATION. 26

12. EFFECT OF AGREEMENT ON TITLE..... 28

13. HOLD HARMLESS 29

14. MISCELLANEOUS PROVISIONS..... 29

LA VISTA PROJECT DEVELOPMENT AGREEMENT

THIS REVISED AGREEMENT (“Agreement”) is entered into this _____ day of ____, ____, (the “Agreement Date”) by and between La Vista L.P., a California limited partnership (“OWNER”), and the CITY OF HAYWARD, a municipal corporation, organized and existing under the Hayward City Charter and laws of the State of California (“CITY”).

RECITALS

This Agreement is entered into based upon the following facts:

A. When used in these Recitals, each of the terms defined in Section 1 of this Agreement shall have the meaning given to it therein.

B. Government Code Sections 65864-65869.5 authorize CITY to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, in order to, among other things: encourage and provide for the development of public facilities in order to support the development of new housing; provide certainty in the approval of development projects in order to avoid the waste of resources and the escalation in the cost of housing and other development to the consumer and encourage investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public; and, to provide assurance to developers (1) that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to their conditions of approval and (2) in order to strengthen the public planning process.

C. OWNER is the holder of a legal or equitable interest in the Property legally described in Exhibit A, and desires and intends to develop the Property as a limited medium density residential development for the uses and purposes set forth in the Development Plan. The Development of the Property requires substantial early and major capital expenditures and investments with respect to the

construction and installation of major infrastructure and facilities, both on-site and off-site, including, without limitation, a neighborhood park and detention basin, a contribution to the community center/additional park area, road improvements, a water tank and a contribution to off-site affordable housing (the “Project”), to serve the residents and others using the Property as anticipated by the General Plan, the Development Approval(s) listed on Exhibit B and this Agreement.

D. CITY has determined that the Development Plan implements the goals and policies of CITY’s General Plan (as referenced in Government Code Sections 65450 et seq.) applicable to the Project and provides appropriate land uses and imposes appropriate standards and requirements with respect to land development and usage so as to maintain the overall quality of life and of the environment within CITY.

E. Pursuant to Government Code Section 65865, CITY has adopted the CITY Development Agreement Ordinance, establishing procedures and requirements for the consideration of proposed development agreements.

F. OWNER has applied for, and CITY has adopted certain development approvals listed on Exhibit C, including amendments to the General Plan pursuant to OWNER’s applications for General Plan Amendment No. PL-2005-0157, a change of zoning pursuant to Zone Change No. PL-2005-0158 and associated Preliminary Development Plan, and approval of a Vesting Tentative Tract Map (7620) (hereafter “the Current Development Approvals”). Specifically, the Project includes: 1) amendments to the City of Hayward’s General Plan Land Use designations to *Limited Medium Density Residential* for the residential portion of the site, to *Parks and Recreation* for the neighborhood park and community center/additional park sites, with the remainder of the site proposed to remain *Limited Open Space* and 2) amendments to zoning/prezoning designations, to a *Planned Development District (PD)* for the residential area of the property and eastern hillside and to *Open Space/Parks and Recreation (OS)* for the neighborhood park and community/additional park center areas, with the remainder of the site to

remain as *Agriculture (AB10A)*. This Development Agreement will protect the interests of CITY's existing and anticipated citizens and the quality of their community and environment through the planned development process. As part of the process of approving the Development Plan authorized by the Current Development Approvals, CITY has analyzed the environmental effects of this Project, adopted a Mitigated Negative Declaration on July 19, 2005, and made the necessary findings required by the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") pursuant to Resolution No. 05-097, and adopted a mitigation monitoring plan pursuant to Resolution No. 05-097.

G. The CITY's staff has reviewed this Agreement and deemed it to be complete and prepared a report to the Planning Commission pursuant to CITY Municipal Code Section 10-9.05 regarding this Agreement's consistency with the CITY's General Plan. The Planning Commission has made a recommendation containing the necessary findings set forth in the CITY Municipal Code Section 10-9.08 which recommends that the City Council authorize execution of a Development Agreement. The City Council has held a public hearing, and found and determined that this Agreement: (i) is consistent with CITY's General Plan, as amended; (ii) is in the best interests of the health, safety and general welfare of CITY, its residents and the public; (iii) is entered into pursuant to and constitutes a present exercise of the police power by CITY; and (iv) is entered into pursuant to and complies with the requirements of Section 65867 of the Development Agreement Legislation and the CITY Development Agreement Ordinance.

H. CITY adopted Ordinance No. _____ on _____, _____, approving this Agreement and its execution in accordance with the provisions of the Development Agreement Legislation and CITY's Development Agreement Ordinance.

I. Based on the foregoing, OWNER and CITY desire to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals of fact, the mutual covenants contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **SECTIONS; DEFINITIONS AND EXHIBITS.**

1.1 **Sections and Paragraphs.** Any reference in this Agreement to a “Section” is a reference to the indicated numbered section or sub-section of this Agreement and a reference to a “Paragraph” is a reference to the indicated paragraph of a Section.

1.2 **Definitions.** The following terms when used in this Agreement shall be defined as follows:

1.2.1 **“Affordable Housing”** means the affordable housing to be provided offsite, along with the associated plan, which is a part of the Development Approvals and is more fully described in Exhibit D. Approval of the Affordable Housing shall be in accordance with the City’s Inclusionary Housing Ordinance.

1.2.2 **“Building and Improvement Standards”** means Regulations of CITY which are of general application which establish regulations and standards for the building, construction and installation of structures and associated improvements such as and including, without limitation, CITY’s building, plumbing, mechanical, grading, swimming pool, sign and fire regulations.

1.2.3 **“CITY”** means the City of Hayward, a charter city located within the County of Alameda, State of California.

1.2.4 **“CITY Development Agreement Ordinance”** means Ordinance 84-015 C.S. (CITY Municipal Code Sections 10-9.01 through 10-9.15) which was adopted on July 10, 1984,

establishing a procedure for the consideration and approval of development agreements pursuant to the Development Agreement Legislation.

1.2.5 “Current Development Approvals” means those certain Development Approvals in effect on the Effective Date with respect to the Property, specifically the General Plan Amendment No. PL-2005-0157, Zone Change No. PL-2005-0158 which authorizes classification of the residential portion of the Property to a Planned Development District and related approval of the associated Preliminary Development Plan, and which amends the Mission-Garin Area Special Design District (SD-5) provisions, Vesting Tentative Tract Map (7620) and the abandonment of a portion of the Alquire Parkway right-of-way, as listed in Exhibit C.

1.2.6 “Development” means the improvement of the Property for purposes of building the structures, improvements and facilities comprising the Project including, without limitation: grading, the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of structures and buildings, the dedication of open space, the dedication of land for the Affordable Housing, the dedication of land and construction of the community park and detention basins; the dedication of land for the Community Center or dedication of land and construction of the Additional Park area; the installation of landscaping; and the payment of certain monies related to the Community Center/Additional Park and the Affordable Housing; but not including the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion thereof, except as otherwise specifically provided herein.

1.2.7 “Development Agreement Legislation” means Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date.

1.2.8 “Development Approval(s)” as listed in Exhibit B, means site specific plans, maps, permits and other entitlements to use of every kind and nature approved or granted by CITY in connection with the Development of the Property, including but not limited to: general plan

amendments, zone changes, including amendments to the Mission-Garin Area Special Design District provisions, preliminary and precise development plans, vesting tentative and final subdivision tract maps and related agreements, abandonment of a portion of the Alquire Parkway right-of-way, development and building permits for residences, the Community Park with Detention Basin (with improvements), the Community Center or Additional Park area (with improvements), the Affordable Housing, road improvements, water tank and related water system upgrades, recreational amenities, development allotments, and grading, building and other similar permits.

1.2.9 “Development Plan” means the development authorized by the Current Development Approvals listed in Exhibit C, including, without limitation, Resolution Nos. 05-098; and Ordinance Nos. 05-05 and 05-04, approving the preliminary development plan for and authorizing the reclassification of the residential area of the Property to a Planned Development District (“PD”), as requested by Zone Change Application No. PL-2005-0158, including approving amendments to the Mission Garin Area Special Design District (SD-5) provisions related to maximum total dwelling unit potential, and approving an amendment to the General Plan Land Use Map to change the residential density classification on the residential area to Limited Medium Density Residential.

1.2.10 “Effective Date” means the date which the OWNER and CITY have executed the Agreement.

1.2.11 “Existing Land Use Ordinances” means those certain Land Use Ordinances in effect on the Effective Date.

1.2.12 “Existing Land Use Regulations” means those certain Land Use Regulations in effect on the Effective Date, including but not limited to Existing Land Use Ordinances and Current Development Approvals.

1.2.13 “General Plan” means the Hayward General Plan adopted by the CITY, as amended by Resolution No. 05-097.

1.2.14 “Governing Policies” means (i) the policies specified in Section 4.1; and (ii) Existing Land Use Ordinances but not including Development Approvals.

1.2.15 “Land Use Ordinances” means the ordinances adopted or to be adopted by CITY which govern permitted uses of land, density and intensity of use and the design, improvement, and construction standards and specifications applicable to the Development of the Property, including, but not limited to, Ordinance No.05-05, adopted on July 26, 2005; zoning ordinances and zoning reclassifications, development moratoria, ordinances implementing growth management and phased development programs, ordinances establishing development exactions, subdivision and park codes and any other similar or related codes and Building and Improvement Standards.

1.2.16 “Land Use Regulations” means Regulations of CITY governing the permitted uses of land, density and intensity of use, including but not limited to adoption or amendment of CITY’s General Plan and Mission Garin Area Special Design District (SD-5) provisions, and the design, improvement and construction standards and specifications applicable to the Development of the Property. Land Use Regulations include, but are not limited to, Land Use Ordinances and Development Approvals. The term Land Use Regulations does not include, however, regulations relating to the conduct of business, professions and occupations generally; taxes and assessments; regulations for the control and abatement of nuisances; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; and, any exercise of the power of eminent domain.

1.2.17 “OWNER” means La Vista L.P., a California limited partnership.

1.2.18 “OWNER’s Obligations” means the obligations of OWNER to pay the sums, build and construct the improvements, dedicate the lands and improvements and undertake and perform the other actions described in Section 3.

1.2.19 “Project” means all phases of the development project contemplated by the Development Plan with respect to the Property, including but not limited to on-site and off-site improvements, as such development project is further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.2.20 “Property” means those certain lands as to which OWNER had a legal or equitable interest on the Effective Date, as legally described in Exhibit A.

1.2.21 “Public Facilities” means those certain lands and facilities to be improved, constructed and dedicated or conveyed to the public pursuant to Section 3.1, as referenced in the Conditions of Approval, listed on Exhibit E.

1.2.22 “Recreational Facilities” means the recreational facilities associated with the Development Approvals consisting of a community park with stormwater detention basins (approximately 30 acres), with an alternative for a community center, and related park improvements, open space and trails within such areas.

1.2.23 “Regulations” means laws, statutes, ordinances, and codes (including the Building and Improvement Standards), resolutions, rules, regulations and orders; approvals, denials and conditional approvals in connection with vesting tentative and final subdivision tract maps, parcel maps, conditional use permits, variances and other permits of every kind and character; programs; and official policies and actions of CITY together with amendments to all of the foregoing.

1.2.24 “Reservations of Authority” means that the Agreement shall not prevent the CITY, in subsequent actions applicable to the Project, from applying new rules, regulations, and

policies applicable to the Property as set forth herein in Section 4 and allowed by applicable law, nor prevent the CITY from denying or conditionally approving any subsequent application on the basis of Existing Land Use Regulations.

1.2.25 “Schedule for Phasing and Construction” means:

Receive Current Development Approvals:	July 2005
Approval of Improvement Plans and Final Maps	June 2015
Finish Reclamation/Mass Grading	October 2015
Start Subdivision Improvements	April 2016
Start Homes	October 2016

The Developer has reserved its right to file multiple final maps on the lands shown on the Vesting Tentative Tract Map. It is currently anticipated that there will be a single phase of development and construction. Nothing prohibits earlier starts to schedule items as shown above, subject to normally-required approvals being granted.

1.2.26 “Quarry Entitlements” means the rights, privileges and obligations granted pursuant to Alameda County Surface Mining Permit SMP-37.

1.3 Exhibits. The reference to a specified “Exhibit” in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation, which exhibits are attached hereto and by this reference made a part hereof.

<u>Exhibit Designation</u>	<u>Description</u>
A	Legal Description of La Vista Project Site
B	List of all Development Approvals
C	List of Current Development Approvals

D	Description of Affordable Housing
E	Conditions of Approval

2. MUTUAL BENEFITS AND ASSURANCES.

2.1 Purposes of Agreement. This Agreement is entered into for the purpose of carrying out the Development Plan for the Project in a manner that will ensure certain anticipated benefits to both CITY (including, without limitation, the existing and future residents of CITY) and OWNER as described in the RECITALS, and to provide to OWNER assurances regarding the Regulations that will be applicable to the Development of the Property, including but not limited to those relating to timing, density and intensity of development, that will justify the undertakings and commitments of OWNER described above and the substantial and early investment in major on-site and off-site infrastructure needed for the Project.

2.2 Undertakings and Assurances Contemplated and Promoted by Development Agreement Legislation. The mutual undertakings and assurances described above and provided for in this Agreement are for the benefit of CITY and OWNER and promote the comprehensive planning, private and public cooperation and participation in the provision of public facilities, the effective and efficient development of infrastructure and facilities supporting development and the mitigation of the impacts of development on the community which was contemplated and promoted by the Development Agreement Legislation.

2.3 Bargained For; Reliance by Parties. The assurances provided to OWNER in Section 4 are provided pursuant to and as contemplated by the Development Agreement Legislation and are bargained and in consideration for the undertakings of OWNER set forth in Section 3 of this Agreement.

3. OWNER'S OBLIGATIONS; PROVISION OF PUBLIC BENEFITS.

3.1 In General; Public Benefits.

(a) Public Benefits. It is acknowledged that a primary purpose of this Agreement is to provide for the coordinated completion of the Affordable Housing described in Exhibit

D, the Recreational Facilities and the Public Facilities referenced in Exhibit E which will better serve the Development of the Property, as well as contributions and dedications which aid in offsetting the impacts of the Project on the community at large, and provide substantial public benefits, which are referenced in Exhibit E. Accordingly, OWNER shall promptly (to the extent that a time for performance is specified herein or in an Implementation Agreement executed pursuant to Section 3.2) and fully perform OWNER's Obligations as set forth in and subject to the terms and conditions of Exhibit E, including, but not limited to, the dedication of land, the construction of site improvements and the contribution of funds for the Affordable Housing, the construction and dedication or conveyance of the Public Facilities, and the dedication of land, the construction of site improvements and the contribution of funds for the Recreational Facilities.

(b) Existing Conditions and Undertakings. OWNER shall continue to be obligated to, and shall, perform all of the duties and obligations provided for or required by any provisions of the General Plan, the Development Plan, the Current Development Approvals, and the conditions contained in Exhibit E in connection with the Development of the Property. OWNER shall have no obligation under this Agreement to proceed with development of the Project, if it decides, in its sole discretion, that it is unable or unwilling to construct the Project. If OWNER fails to complete any Project phase or Development Approval requirement, CITY may after providing OWNER with notice and opportunity to cure, and an opportunity for a public hearing, modify or cancel the Development Approvals. CITY may also terminate this Agreement pursuant to Section 10.1 if OWNER fails to construct the Project in accordance with the Development Approvals.

3.2 Dedication, Construction and Conveyance of Public Facilities. The Public Facilities to be dedicated (in the case of lands) and/or constructed by OWNER and dedicated or conveyed to CITY as referenced in Exhibit E, shall be completed in accordance with the provisions of Exhibit E and designs, specifications and standards promulgated by CITY in accordance with the Existing Land Use Regulations and Precise Development Plan and dedicated and conveyed to CITY in fee, free of all liens and

encumbrances of every kind and nature except as expressly set forth in Exhibit E or agreed in writing by CITY. In order to effectuate the purposes of this Agreement, OWNER and CITY may enter into one or more agreements (hereinafter jointly “Implementation Agreement(s)”) prior to the filing and recording of each Final Map necessary for the Property. Such Implementation Agreement(s) may take the form of a Subdivision Improvement Agreement. Each Subdivision Improvement Agreement shall provide the specific terms and set forth standards and deadlines for the construction and completion of the Public Facilities and their conveyance to CITY as provided for in this Agreement, and construction of privately owned infrastructure and common facilities necessary for the subdivision or phase described in the Vesting Tentative Map and Precise Development Plan approval.

3.3 Relationship of Parties. In performing OWNER’s obligations, OWNER is acting under this Agreement as an independent contractor and is not acting as the agent or employee of CITY nor shall anything in this Agreement be construed as creating between OWNER and CITY a partnership or joint venture for any purpose.

3.4 Public Works. If OWNER is required by this Agreement to finance and either design or construct any public works facilities which will be dedicated or conveyed to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in accordance with CITY specifications.

3.5 Obligations Regarding Public Facilities. In any instance where OWNER is required to construct any Public Facilities on lands within City not owned by OWNER, OWNER agrees to use its best efforts to acquire any rights-of-way, easements, or other property rights or interests within City which CITY reasonably determines to be necessary for such Public Facilities. In the event that OWNER is unable to acquire any such property right or interest and it becomes necessary for CITY to utilize eminent domain to acquire any real property rights or interests necessary for the construction of such Public Facilities, OWNER shall be obligated to pay for the costs of acquiring such rights or interests,

including but not limited to relocation costs, costs of suit and attorney's fees. In any instance where OWNER is required to pay for a portion of the costs of construction of Public Facilities on lands outside of City, OWNER shall be required to contribute its share of the reasonable costs of construction and acquisition either prior to the commencement of construction or acquisition of any rights-of-way, easements or interests reasonably required to construct such Public Facilities.

3.6 Effect on Project Schedule. In any instance where CITY is responsible for constructing any Public Facilities for which OWNER is required to pay for all or a portion of the costs of such construction and any related land acquisition, OWNER shall cooperate with the CITY and CITY shall use its best efforts to construct any such Public Facility to achieve the timing goals of the phasing plan approved by CITY or timing of build out and occupancy of the Project. The CITY's inability to complete construction of any Public Facility necessary for the Property due to circumstances beyond the CITY's control shall not constitute a default of this Agreement.

3.7 Benefit Assessment District/Reimbursement Agreement. Upon OWNER's request and payment of CITY's processing charges, the CITY shall initiate proceedings to establish a benefit assessment district or a reimbursement agreement to the extent that the off site system improvements constructed or financed by OWNER pursuant to Exhibit E benefit other properties which are hereafter developed, and OWNER has not been reimbursed for such costs.

4. REGULATIONS GOVERNING THE DEVELOPMENT OF THE PROPERTY AND OTHER CITY OBLIGATIONS.

4.1 Governing Policies. The following policies set forth in this Section.4.1 are consistent with and are provided for in or contemplated by the Existing Land Use Regulations, including the General Plan and the Development Plan.

(a) Permitted Uses. The uses permitted hereunder in accordance with the Existing Land Use Regulations, including but not limited to the following: residential, public and

community facilities, recreational facilities, open space and other public and private recreation facilities, as more specifically described in and subject to the limitations of the Development Plan.

(b) Number of Dwelling Units, Density and Intensity. The maximum total number, density and intensity of residential units permitted hereunder in accordance with the Existing Land Use Regulations, are as set forth in the Development Plan.

(c) Maximum Height and Size of Buildings. The maximum height and size of the Project buildings within the Property are as permitted in accordance with the Development Plan.

(d) Reservations and Dedications of Lands for Public Purposes and Undertaking to Participate in Completion of Major Public Facilities. As provided in Section 3 and more specifically detailed in Exhibit E, OWNER has undertaken to dedicate certain lands and construct and convey to the public the Public Facilities; to dedicate land for, to construct site improvements for, and to contribute certain funds for the Recreational Facilities; and to dedicate land for, to construct site improvements for, and to contribute certain funds for the Affordable Housing; and to provide certain public benefits. In addition, the Existing Land Use Regulations and Current Development Approvals require OWNER to provide and undertake certain other public benefits and facilities.

(e) Moratoria, Phasing of Development. The parties acknowledge and agree that the Governing Policies contemplate and provide for the phasing of the Development of the Property and that except as expressly provided in this Section 4, no subsequent CITY imposed moratorium, ordinance, resolution, or other land use regulation or limitation on the conditioning, rate, timing or sequencing of the Development of the Property or any portion thereof shall apply to or govern the Development of the Property during the term hereof whether affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy permits or other entitlements to use issued or granted by CITY. In the event of any such subsequent action by CITY, OWNER shall continue to be entitled to apply for and receive Development Approvals in accordance with the Existing Land Use Regulations and

Ordinances, and to otherwise develop the Property subject only to the exercise of the reservation of Authority set forth in Section 4.3, the limitations described in Section 4.4 and the terms of this Agreement.

4.2 Regulation of Development.

(a) In General. Notwithstanding any future action of CITY, whether by ordinance, resolution, initiative or otherwise, the CITY Land Use Regulations applicable to and governing the Development of the Property during the term hereof shall be the Existing Land Use Regulations except and subject to the Reservations of Authority and the terms of this Agreement.

(b) Vested Rights. In developing the Property, OWNER is provided and assured the vested right to require that the Land Use Regulations of CITY applicable to and governing the Development of the Property during the term hereof shall be as provided in this Section 4.2.

4.3 Limitations. Reservations and Exceptions. Notwithstanding anything to the contrary set forth in Section 4.2 herein above, in addition to the Existing Land Use Regulations, only the following Land Use Regulations adopted by CITY hereafter shall apply to and govern the Development of the Property (“Reservations of Authority”):

(a) Future Regulations. Future CITY Land Use Regulations which are not in conflict with the Governing Policies or which are in conflict with the Governing Policies and the application of which to the Development of the Property has been consented to in writing by OWNER;

(b) State and Federal Laws and Regulations. Existing and future State and federal laws and regulations, together with any CITY regulations, programs and actions, or inaction, which are reasonably (taking into consideration, among other things, the assurances provided to OWNER hereunder) adopted or undertaken by CITY in order to comply with mandatory state and federal laws and regulations; provided, that in the event that State or federal laws and regulations prevent or preclude

compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such State and federal laws and regulations, in which event this Agreement shall remain in full force and effect to the extent that it is not inconsistent with such laws and regulations and that performance of the remaining provisions would not be inconsistent with the intent and purposes of this Agreement;

(c) Public Health and Safety. Land Use Regulations which are adopted by CITY, which may be in conflict with the Governing Policies which are reasonably required in order to prevent a condition dangerous to the health or safety of the residents of the Project or adjoining properties;

(d) Building and Improvement Standards. Present and future Building and Improvement Standards, except that (taking into consideration the assurances to OWNER in Section 4) any future amendment thereto which reduces the amount of land within the Property which can be utilized for structures and improvements or increases the amount of open space within the Project under the Development Plan shall not be considered a provision of any of the Building and Improvement Standards included within the exception provided by this Paragraph 4.3(d) and shall not apply to and govern the Development of the Project unless it complies with another exception under this Section 4.3 (such as, for example, Paragraph 4.3 (c));

(e) Processing Fees and Charges. Legally allowed processing fees and charges of every kind and nature imposed or required by CITY under current or future Regulations covering the actual costs of CITY in (i) processing applications and requests for permits, approvals and other actions and (ii) monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of OWNER hereunder; and

(f) Taxes, Fees and Assessments. CITY may impose taxes, assessments and fees, as allowed by the Existing Land Use Ordinances and the Existing Land Use Regulations, necessary to implement the Project, as detailed in Exhibit E. The amount of any fees, taxes and assessments applicable to the Project may be reasonably increased over time so long as the increase is applied consistently to all comparable land or projects subject thereto.

4.4 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the Development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies.

4.5 CITY Cooperation. CITY will cooperate with OWNER and take such additional actions as may be reasonably requested by OWNER to implement this Agreement, including but not limited to, formation of a Geologic Hazard Abatement District (“GHAD”) necessary to maintain and, if necessary, repair the lands within Parcel A as shown on the Vesting Tentative Tract Map, formation of a special benefit assessment district(s) for the financing of the construction, improvement, or acquisition of public infrastructure, facilities, lands to benefit the Project, its residents and the CITY in general; provided, however, any such action shall be subject to CITY’s Reservations of Authority. In performing any and all of its obligations under this Agreement CITY shall do so in a timely manner and CITY’s failure to carry out any of its obligation under this Agreement in a timely manner shall relieve OWNER from compliance with any reasonably related requirement or obligation under this Agreement.

4.6 Sewer and Water Capacity. OWNER shall design, construct and fund, or contribute 100% to the cost of constructing the water system improvements, pursuant to Exhibit E requirements. For those off-site water system improvements which the OWNER is obligated to design and fund, and CITY is obligated to construct, CITY shall use its best efforts to complete such improvements in an expeditious and timely manner to enable timely issuance of Project building permits and certificates of occupancy.

Any failure by CITY to construct or complete any such Public Facility necessary for operation of the Project, or any phase thereof that makes it impossible for OWNER to comply with the Development Approvals or with this Agreement, or to construct the Project in accordance with the phasing plan approved by CITY, shall not constitute a breach or default under this Agreement. CITY acknowledges that, with the water and sewer improvements to be implemented by OWNER, there is adequate water and sewer capacity to serve the Project.

4.7 Acceptance of Dedications. CITY shall accept in a timely manner all dedications and conveyances of Public Facilities from OWNER.

4.8 Credit and Reimbursement Generally. At the time of each final map approval for any portion of the Project, CITY shall reimburse OWNER, to the extent that CITY has received contributions defraying the cost of such improvements from other benefited property owners, or consider establishment of a benefit assessment district or reimbursement agreement, or grant a credit for, all funds expended, costs incurred or improvements made by OWNER pursuant to OWNER'S obligations as set forth in Exhibit E to the extent that OWNER's contributions or improvements directly benefit other development.

4.9 Credit for Infrastructure. City agrees to condition approval of any project that would rely on Owner-funded Public Facilities improvements upon payment on a per-unit basis of the fair share of the cost of such Public Facilities improvements. At least three such projects (identified below) can be particularly identified as of the date of this Agreement, although the City's obligation under this section would apply equally to any such projects identified in the future. If other development that will rely on infrastructure precedes the Project, credits shall be made against the Development Fees at the time they are paid. If other development to rely on Project infrastructure succeeds Project, Owner shall be reimbursed by the City in an amount equal to the required credits.

4.9.1 Ersted Parcel. (Assessor's Parcel Number 078C-0461-001-13)

4.9.2 Smith Parcel. (Assessor's Parcel Number 083-0125-001-17)

4.9.3 Zaballos Parcel U (Assessor's Parcel Number 083-0254-002-03)

5. PERIODIC REVIEWS.

5.1 Annual Review. CITY and OWNER shall review the performance of this Agreement, and the Development of the Project, at least once every twelve (12) month period from the Effective Date. The CITY's reasonable costs of monitoring this Agreement shall be paid by OWNER. As part of such annual monitoring review, within thirty (30) days after each anniversary of this Agreement, OWNER shall deliver to CITY:

(a) a then current build-out phasing plan for the Project; and

(b) all information reasonably requested by CITY (i) regarding OWNER's performance under this Agreement demonstrating that OWNER has complied in good faith with terms of this Agreement and (ii) as required by the Existing Land Use Regulations.

If as a result of such periodic review, CITY finds and determines, on the basis of substantial evidence, that OWNER has not complied in good faith with any of the terms or conditions of this Agreement, CITY may terminate this Agreement as provided in Section 10.2.

6. TRANSFERS AND ASSIGNMENTS.

6.1 Transfers and Assignments of Rights and Interests.

(a) General. Neither party shall assign or transfer any of its interests, rights or obligations under this Agreement to another without the written consent of the other, which consent shall not be unreasonably withheld. The CITY shall promptly consent to the assignment if the CITY determines that all of the following requirements are met: (1) the OWNER shall not be in default of this Agreement, (2) the purchaser or assignee shall be willing and capable of complying with the terms and

conditions of this Agreement and shall have agreed to comply with this Agreement, and (3) the purchaser or assignee shall execute any document reasonably requested by the CITY with respect to the assumption of the OWNER's obligations under this Agreement. In the event OWNER assigns, or transfers its interest in the Project, OWNER shall ensure that any such assignment or transfer includes an assignment or transfer of OWNER's obligations under this Agreement. OWNER shall also provide CITY with sufficient documentation of such assignment or transfer of OWNER's duties and obligations. The term "assignment" as used in this Agreement shall include successors-in-interest to the CITY or OWNER that may be created by operation of law. Notwithstanding the foregoing, CITY shall have the right to sell, assign or transfer to another public agency CITY's interest in any property dedicated or transferred to CITY pursuant to the terms of this Agreement.

Any attempt to assign or transfer any right or interest in this Agreement except in strict compliance with this Section 6, shall be null and void and of no force and effect.

(b) Subject to Terms of Agreement. Following any such assignment or transfer of any of the rights and interests of OWNER under this Agreement, the exercise, use and enjoyment shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were OWNER

(c) Release of OWNER. Notwithstanding the assignment or transfer of portions or all of the Property or rights or interests under this Agreement, OWNER shall continue to be obligated under this Agreement unless released or partially released by CITY with respect to OWNER's Obligations and the other duties and obligations of OWNER under this Agreement, pursuant to this Section 6.1.(c), which release or partial release shall be provided by CITY upon the full satisfaction by OWNER of the following conditions:

(i) OWNER is not then in default under this Agreement;

(ii) OWNER has obtained the, consent of CITY to the assignment as provided in Section 6.1.(a); and

(iii) Such assignee or transferee has assumed such duties and obligations as to which OWNER is requesting to be released and such assignee or transferee has provided CITY with security and other assurances equivalent to that which were provided by OWNER assuring CITY that OWNER's Obligations and the other duties and obligations of OWNER under this Agreement for which OWNER is being released will be fully and strictly performed as provided in this Agreement.

7. TERM OF AGREEMENT.

7.1 Stated Term. This Agreement shall become effective on the Effective Date and unless earlier terminated pursuant to the provisions of this Agreement shall continue in effect for (15) years until May 26, 2021. Notwithstanding the foregoing, in the event that the parties determine that a longer period is necessary to achieve the foregoing purposes, the term of the Agreement may be extended an additional five (5) years by the further written agreement of the City Council and La Vista, L.P. in accordance with Section 8.

7.2 Rights and Duties Following Termination or Expiration. Upon the termination or expiration of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligations to have been performed prior to said termination or which survive such termination pursuant to the Current Development Approvals, Implementation Agreement(s) or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to said termination.

8. AMENDMENT.

8.1 Amendment. Except as otherwise specifically provided in this Agreement, this Agreement may be amended or canceled only by the mutual agreement of the parties in accordance with

Government Code Section 65868 and CITY Development Agreement Ordinance, in a writing executed by the parties and recorded in the official records of the County of Alameda.

8.2 Amendment of Development Plan. Except as otherwise expressly provided, the Project shall proceed in accordance with the Development Plan, conditions of approval (Exhibit E) approved by CITY on July 19, 2005, which may be amended or modified by the City Council. Additionally, the Development Plan and conditions may be amended or modified in the following manner:

(a) The Planning Director may administratively amend or modify the Development Plan if the Director determines that the requested amendment or modification is substantially consistent with this Agreement.

(b) Except as provided herein, amendment or modification of the Development Plan shall comply with the procedural provisions of the CITY's Land Use Ordinances and Regulations in effect on the date of application for such amendment or modification.

9. PROCESSING OF REQUESTS AND APPLICATION; OTHER GOVERNMENT PERMITS.

9.1 Processing. Upon satisfactory completion by OWNER of all required preliminary actions, meetings, submittal of required information and payment of appropriate processing fees, if any, OWNER and CITY shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by OWNER of the Project in accordance with the Development Approvals, including but not limited to the following: processing and checking of all applications, maps, site plans, development plans, land use plans, grading plans, building plans and specifications and environmental assessments and reports and holding all required public hearings for permits, entitlements or approvals relating to the development of the Project, including, but not limited to, all site plan approvals, final development plans, parcel maps, subdivision maps, subdivision improvement agreements, grading permits, building permits, lot line adjustments, encroachment permits and related

matters as necessary for the completion of the development of all lots and parcels comprising the Project site. In this regard, OWNER, in a timely manner, will provide CITY with all documents, applications, plans and other information necessary for the CITY to carry out its obligations hereunder and will cause OWNER's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefore. It is the express intent of this Agreement that the parties cooperate and diligently work to implement any zoning or other land use, site plan, subdivision, grading, building or other approvals for development of the Project in accordance with the Development Approvals, and both OWNER and CITY each shall use their best efforts to effectuate the purposes of this Agreement.

9.2 Other Governmental Permits. In addition, OWNER shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. CITY shall cooperate with OWNER in its endeavors to obtain such permits and approvals. Notwithstanding the foregoing, CITY shall apply for and obtain such permits and approvals as may be required from CalTrans or other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the construction of the Tennyson Road extension. OWNER shall cooperate with CITY in its endeavors to obtain such permits and approvals.

10. DEFAULT AND REMEDIES.

10.1 Termination of Agreement for Default of Owner. CITY in its reasonable discretion may terminate this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under, or to comply in good faith with the material terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within ninety (90) days after the effective date of such notice or, in the event that such default cannot be cured within such ninety (90), day period but can be cured

within a longer time, has failed to commence the actions necessary to cure such default within such ninety (90) day period and to diligently proceed to complete such actions and cure such default.

10.2 Termination of Agreement for Default of CITY. OWNER in its reasonable discretion may terminate this Agreement by written notice to CITY only after the default by CITY in the performance of a material term of this Agreement and written notice by OWNER thereof to CITY and, where the default can be cured, the failure of CITY to cure such default within ninety (90) days after the effective date for such notice or, in the event that such default cannot be cured within such ninety (90) day period, the failure of CITY to commence to cure such default within such ninety (90) day period and diligently proceed to complete such actions and to cure such default.

10.3 Remedies. In any proceeding relating to any issue arising under this Agreement, the parties may mutually agree to mediation of their dispute. Alternatively, either party may, in addition to any other rights or remedies it may have at law or in equity institute an action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the parties hereto, after exhaustion of administrative remedies.

11. THIRD PARTY LITIGATION.

11.1 General Plan Litigation.

(a) Limitation. As set forth above, CITY has determined that this Agreement is consistent with the Land Use Regulations (including the General Plan) and meets all of the legal requirements of State law. The parties acknowledge that:

(i) in the future there may be challenges to legality, validity and adequacy of the Land Use Regulations; and

(ii) if successful, such challenges could delay or prevent the performance of this Agreement and the Development of the Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Section 11, CITY shall have no liability under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan or this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the Land Use Regulations, or portions thereof, are invalid or inadequate or not in compliance with law.

(b) Revision of General Plan. If for any reason the Land Use Regulations or any part thereof are hereafter judicially determined as provided above to be not in compliance with the State or federal Constitutions, laws or regulations, this Agreement shall remain in full force and effect and upon the adoption or amendment of any Land Use Regulations which are necessary in order to comply with State or federal Constitutions, laws or regulations to cure such invalidity or inadequacy, together with any amendments of the Development Plan and the Land Use Regulations which are necessary in order to comply with such new or revised Land Use Regulations, the reference in Section 4 to the General Plan shall thereafter mean and refer to such new or amended General Plan, Development Plan and Land Use Regulations.

(c) Suspension of Obligations. In the event that Development of the Property is enjoined or prevented from proceeding by any judicial order or determination in connection with the determinations regarding the Land Use Regulations referred to above and the subsequent proceedings with respect thereto referred to in paragraph (b) of this Section, the time for performance of the obligations of the parties hereunder shall be extended as provided in Section 14.13.

(d) Option to Terminate. In the event that any such amendments of the General Plan, the Development Plan or Land Use Regulations result in a reduction in the number of units

or the density or intensity, or timing, sequencing or phasing of Development, OWNER may terminate this Agreement by notice in writing to CITY and recorded in the official records of CITY.

(e) Opportunity to Intervene. In the event of a challenge to CITY's General Plan, CITY shall provide notice of such action to OWNER and OWNER may elect to intervene in any such action as a real party in interest. CITY agrees not to oppose such intervention.

12. EFFECT OF AGREEMENT ON TITLE.

12.1 Covenants Run With The Land. Subject to the provisions of Sections 6 and 14:

(i) All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns;

(ii) All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law; and

(iii) Each covenant to do or refrain from doing some act on the Property hereunder (A) is for the benefit of and is a burden upon every portion of the Property, (B) runs with such lands and (C) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and shall benefit each party and its lands hereunder, and each other person succeeding to an interest in such lands.

12.2 No Dedication or Lien. Nothing herein shall be construed as constituting a dedication or transfer of any right or interest in, or as creating a lien with respect to, the title to the Property. Any dedication or transfer of any right or interest in the Property shall be made only in accordance with this Agreement.

13. HOLD HARMLESS

13.1 Hold Harmless; OWNER's Activities. OWNER hereby agrees to, and shall defend, indemnify and hold harmless CITY and its elected and appointed boards, commissions, officers, agents, and employees from any and all claims, costs and liability for any damages personal injury or death, which may arise, directly or indirectly, from OWNER's or OWNER's contractors, subcontractors, agents, or employees' operations under this Agreement, whether such operations be by OWNER or by any of OWNER's contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for OWNER or any of OWNER's contractors or subcontractors.

13.2 Hold Harmless: Challenge of Agreement. OWNER further agrees to indemnify, hold harmless, pay all costs, including costs of suit and attorneys' fees, and provide a defense for CITY, upon CITY's tender, in any action challenging the validity of this Agreement or relating to any of the Current Development Approvals, including, but not limited to compliance with any requirement of law, approval or action which is a condition precedent to Development of any portion of the Property.

14. MISCELLANEOUS PROVISIONS.

14.1 Effect of Agreement. Once this Development Agreement is effective, the provisions of this Agreement shall bind the Property, and any part thereof. Notwithstanding the foregoing, nothing herein shall modify, limit or affect in any manner the Quarry Entitlements.

14.2 CITY Acceptance of Mitigation. CITY acknowledges and agrees that compliance with the provisions of Exhibit E with respect to local park requirements through the planned dedication of land, the construction of site improvements and the payment of certain funds for the Recreational

Facilities and the dedication of land, the construction of site improvements, the construction of affordable housing units as indicated in Exhibit E and the payment of certain funds for development of the Affordable Housing and the dedication of land and acceptance of use restrictions and the formation of a Geologic Hazard Abatement District and Landscape and Lighting District constitutes full and complete satisfaction of required mitigation of impacts on recreational facilities and parkland, affordable housing, and open space and meets all CITY requirements regarding same.

14.3 Recordation of Agreement. The City Clerk of City shall cause this Agreement to be recorded within ten (10) days after the execution of this Agreement by OWNER and by CITY's City Manager pursuant to the ordinance approving this Agreement in the Official Records of the County of Alameda. Any amendment or cancellation of this Agreement shall be immediately recorded in the Official Records of the County of Alameda.

14.4 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

14.5 Severability. If any term, provision, covenant or condition of this Agreement, including but not limited to the Exhibits to this Agreement, shall be determined invalid, void or unenforceable by a final determination by a court of competent jurisdiction, the remainder of, this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Any final determination that any condition in any Exhibit is invalid, void or unenforceable shall not affect any other condition or portion of any Existing Development Approval which is not also specifically determined invalid, void or unenforceable except to the extent such remaining conditions are rendered impracticable to perform.

14.6 Integration and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California.

14.7 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

14.8 Singular and Plural. As used herein, the singular of any word includes the plural.

14.9 Joint and Several Obligations. If any obligation of OWNER to CITY is the obligation of more than one person, such obligation and any liability with respect thereto shall be joint and several among the obligees.

14.10 Time of Essence. Time is of the essence in:

- (a) The performance of the provisions of this Agreement as to which time is an element; and
- (b) The resolution of any dispute which may arise concerning the obligations of OWNER and CITY as set forth in this Agreement.

14.11 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

14.12 No Third Party Beneficiaries. The only parties to this Agreement are OWNER and CITY. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed to benefit or be enforceable by any other person whatsoever.

14.13 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond such party's control, government regulations other than CITY's, court actions (such as restraining orders or injunctions) or other causes beyond such party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended by the period of time that such events prevented such performance provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years or for a period which would cause this Agreement or provisions hereof to be void as violating the rule against perpetuities.

14.14 Attorneys' Fees. In any action or undertaking between the parties hereto to enforce the provisions of this Agreement, each of the parties hereto shall bear its own attorneys' fees.

14.15 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

14.16 Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent certified mail, postage prepaid and addressed as follows:

If to CITY: Frances David, City Manager
City of Hayward
777 "B" Street
Hayward, CA 94541-5007

With a copy to: Michael Lawson, City Attorney
City of Hayward
777 "B" Street
Hayward, CA 94541-5007

If to OWNER: James B. Summers, President
La Vista L.P.
11555 Dublin Blvd.
Dublin, CA 94588

With a copy to: Michael Willcoxon, Esq.
11555 Dublin Blvd.
Dublin, CA 94588

Any notice given as required herein shall be deemed given seventy-two (72) hours after deposit in the United States mail or upon receipt. A party may change its address for notices by giving notice in writing to the other party as required herein and thereafter notices shall be addressed and transmitted to the new address.

14.17 Successors and Assigns. Subject to the provisions of Section 6, the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

14.18 Counterparts. This Agreement may be executed by the parties in counterparts which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

IN WITNESS WHEREOF, the parties. hereto have executed this Agreement on the day and year first set forth above.

OWNER: La Vista L.P., a California limited partnership

By: _____
Ernest D. Lampkin

Its: _____

CITY: CITY OF HAYWARD

By: _____
Frances David

Its: City Manager _____

APPROVED AS TO FORM:

By: _____
Michael Lawson

Its: City Attorney _____

- Exhibits:
- A Legal Description of La Vista Project Site
 - B List of Development Approvals
 - C List of Current development approvals
 - D Description of Affordable Housing
 - E Conditions of Approval

LEGAL DESCRIPTION OF LA VISTA PROJECT SITE

LIST OF ALL DEVELOPMENT APPROVALS

1. General Plan Amendment
2. Zone Change (reclassification and amendments to the Mission-Garin Area Special Design District (SD-5) provisions)
3. Vesting Tentative Tract Map (Tract 7620)
4. Preliminary Development Plan
5. Annexation
6. Precise Development Plan
7. Improvement and Grading Plans, including the Community Park, Tennyson Road, connector road from Alquire Parkway and expansion of the Garin Water System.
8. Final Tract Maps
9. Subdivision Agreements
10. Building Permits
11. Tract Improvements Acceptance
12. Certificates of Occupancy
13. Building Permits Final
14. Abandonment of portions of the Alquire Parkway right-of-way

LIST OF CURRENT DEVELOPMENT APPROVALS

Current Development Approvals

1. General Plan Amendment PL-2005-0157
2. Zone Change PL-2005-0158
3. Vesting Tentative Tract Map 7620
4. Preliminary Development Plan
5. Abandonment of a portion of the Alquire Parkway right-of-way

DESCRIPTION OF AFFORDABLE HOUSING

CONDITIONS OF APPROVAL

ORDINANCE NO. 16-

AN ORDINANCE AUTHORIZING EXECUTION OF AMENDMENT TO THE LA VISTA PROJECT DEVELOPMENT AGREEMENT TO EXTEND THE TERMS OF THE AGREEMENT BY FIVE YEARS TO MAY OF 2021 AND INCORPORATING A REVISED PROJECT SCHEDULE

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Findings. This ordinance authorizes the execution of an amendment to the existing La Vista Project Development Agreement ("Amendment to the Development Agreement") related to the La Vista Development project (the "Project"), a development of approximately 162 acres in size, located at 28816 Mission Boulevard in eastern Hayward. The findings and determinations contained in the accompanying resolution (Resolution No. ___) approving the Amendment to the Development Agreement and previous or original resolutions approving the project are incorporated herein by reference: Resolution No. 05-097, which approved General Plan Amendment PL 2005-0157 GPA, which amended the land use designations for the property, Resolution No. 05-098, which approved Zone Change Application PL 2005-1058 ZC, reclassifying the Property from Agriculture (AB10A) District to Planned Development (PD) District and Open Space/Parks and Recreation (OS) District and approving Vesting Tentative Map 7620 (PL 2005-0156 TTM 7620), Ordinance No. 05-04 approving text changes to the Mission-Garin Special Design (SD-5) District regulations, Ordinance No. 05-05 that rezoned the development site prior to annexation, and Ordinance No. 05-06 authorizing execution of a Development Agreement for the project.

The following additional findings also support the adoption of this ordinance authorizing the execution of the Amendment to Development Agreement.

A. This ordinance is adopted pursuant to the enabling provisions of Article 9, Chapter 10 of the Hayward Municipal Code, the City's Development Agreement Ordinance, and the provisions of state law which authorize the City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of their property, contained in Government Code sections 65864 through 65869.5.

The proposed Amendment to Sections 1.2.10, 1.2.25 and 7 of the Development Agreement updates the project schedule and extends the term of the Development Agreement for five years, but will not change any of the existing General Plan or zoning designations, is consistent with the objectives, policies, general land uses and programs specified in the City's General Plan, Mission-Garin Area Special Design District, and the Hillside Design and Urban Wildland/Interface Guidelines in that Section 3 of the Development Agreement stipulates the development must be consistent with such provisions. The Amendment is compatible with the uses authorized in, and the regulations prescribed for, the land use

district in which the real property is located in that the General Plan, as previously amended for this project, allows for Limited Medium Density Residential development at 8.7 to 12.0 dwelling units per net acre and the development is proposed to have 9.3 dwelling units per net acre. Also, the Agreement is consistent with provisions in City's new General Plan adopted in 2014, specifically Guiding Principle #2, which states that "Hayward should have safe and clean neighborhoods with an expanded network of parks . . ."

The approved subdivision layout incorporates "Crime Prevention Through Urban Design" creating a new safe neighborhood in the City and creation of a new park located on the western border of the subdivision. The request is also consistent with Goal 3 (Complete Neighborhoods - Land Use and Community Character Element) in that the development request creates a complete neighborhood with convenient access to La Vista Park and other community amenities such as the new community center that will be constructed nearby. Specifically pursuant to Policy LU-3.1, "the City shall promote efforts to make neighborhoods more complete by encouraging the development of a mix of complementary uses and amenities that meet the daily needs of residents." Construction of this development will meet this General Plan Policy through the construction of a new community park adjacent to the new neighborhood. As stipulated in the Development Agreement, the applicant will be contributing significant sums of money to construct portions of the new park and also contribute to construction of a future new community center. Policy LU-3.6 (Residential Design Strategies) encourages new residential developments to "create a highly connected block and street network," "design new streets with wide sidewalks, planting strips, street trees, and pedestrian-scaled lighting," and "orienting homes . . . towards streets and public spaces." The La Vista development incorporates all of these desirable design elements outlined in this General Plan policy.

B. The proposed Amendment to the Development Agreement is in conformity with public convenience, general welfare, and good land use practice, in that it will provide new housing opportunities and new public facilities, including 30 acres for a new community park and substantial contribution toward development of a new community center, while minimizing impacts to the area.

C. Existing or proposed public facilities have sufficient capacity to accommodate the proposed development in that Tennyson Road is proposed to be extended eastward from Mission Boulevard and Alquire Parkway is proposed to be extended northward to serve the development, thereby providing two means of ingress and egress to and from the development, and a new 0.75 million gallon water tank and related system improvements are proposed for the Garin reservoir site to serve the development.

D. The public health, safety, and general welfare will be promoted and advanced by the proposed development in that mitigation measures will be required as a part of the development approvals to ensure that significant environmental impacts will be reduced to levels of insignificance, including those associated with dust and air quality, naturally-occurring asbestos, and geologic hazards.

E. The orderly development of property or the preservation of the property values will be promoted and advanced by the Amendment to the Development Agreement, in that high-quality single-family residential housing will be constructed in an area that

previously contained an active surface mining operation, resulting in less impacts to, and a development more compatible with, surrounding properties.

Section 2. Authorization to Execute Amendment to the La Vista Development Agreement. Based on the findings set forth in this ordinance and accompanying Resolution No. 16-____, as well as a review of the proposed Amendment to the Development Agreement submitted to the City Council at the March 1, 2016 meeting, the City Council hereby takes the following actions:

A. The City Manager is authorized to execute an Amendment to Development Agreement, regarding the La Vista Development project, substantially in the form of the proposed Amendment to Development Agreement presented to the City Council on March 1, 2016, together with such minor clarifying changes as may be necessary upon approval by the City Manager after consultation with the City Attorney.

B. The City Manager is also authorized to take such further actions which he or she deems necessary and proper to carry out and or monitor performance of the terms of the executed Amendment to the Development Agreement, pursuant to applicable laws and regulations. This authority includes, but is not limited to execution of any further agreements which the City Manager deems necessary to implement the Amendment to the Development Agreement.

Section 3. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided the remainder of the ordinance, absent the excised portion, can be reasonable interpreted to give effect to intentions of the City Council.

Section 4. Effective Date. This ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held on March 1, 2016, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held on March 15, 2016, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

**LA VISTA, L.P.
P.O. BOX 2922
DUBLIN, CA 94568**

February 3, 2016

Mr. David Rizk
Director of Development Services
City of Hayward
777 B Street
Hayward, CA 94541

Re: La Vista Tract 7620 – Request for Extension of Development Agreement

Dear Mr. Rizk:

Pursuant to section 7.1 of the Development Agreement between The City of Hayward and La Vista L.P., recorded July 11, 2008, we hereby request a 5 year extension of the Development Agreement to May 26, 2021. We are moving forward with this project and expect to progress according to the following schedule:

- *Mass grading completed in October 2015. Main infrastructure to start early 2016*
- *Alquire Parkway extension and Bodega improvements will start Spring 2016 and finish in 2016*
- *Complete the infrastructure for units south of Tennyson by September 2016*
- *Complete all remaining infrastructure by the end of 2016*
- *Model Construction to start in September 2016*
- *Models open by the end of 2016*
- *Production units start in October 2016*
- *First occupancies by the first quarter of 2017*

As you know, we have made great progress on this project and have made continued substantial financial investment to meet the conditions of approval even while the project was delayed. One of these substantial investments was to dedicate the land and improvements for the Walker Landing Eden Housing project. This was done in 2007 and contributed 72 low and very low affordable housing units to the inventory for the City of Hayward. This was well in excess of the 27 units required by the Conditions of Approval. This and other substantial investments warrant the extension of the Development Agreement.

We are asking only that section 1.2.25 “Schedule for Phasing and Construction” be modified to reflect the schedule outlined above. We are not requesting any other changes to the Agreement.

February 3, 2016

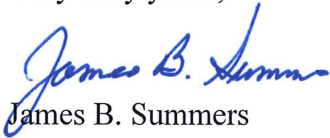
Page 2

Additionally, we would like to re-iterate our commitment to contribute 1.5 Million dollars towards construction of a future community center and, in addition to dedicating the land for the La Vista park, contributing 2.14 Million dollars toward improvements of the park.

We appreciate the work that you and your staff have put into this project and we look forward to receiving this extension so we can continue to bring this exciting project and all of its community benefits to fruition.

Please do not hesitate to call me if you require any additional information. My office number is (925) 828-7999.

Very truly yours,

A handwritten signature in blue ink that reads "James B. Summers". The signature is written in a cursive style with a large initial "J".

James B. Summers

President

La Vista LP

Cc: Damon Golubics – City of Hayward
City Manager - City of Hayward
City Attorney – City of Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

Staff Report

File #: LB 16-022

DATE: March 1, 2016

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT

Adoption of a Resolution Placing Renewal of the Utility User Tax (UUT) on the June 2016 Ballot

RECOMMENDATION

That Council takes the following actions to place renewal of the Utility User Tax (UUT) measure on the June 2016 ballot, levying a 5.5% tax on the use of electricity, gas, telecommunications, and video services before the voter of Hayward:

- 1) Adopts a Resolution approving the ballot statement and full text of the measure (the proposed Ordinance, Exhibit A of Attachment I) as it will appear on the ballot and requesting the Alameda County Board of Supervisors to authorize the County Clerk and Registrar of Voters to provide election services and canvass the returns (Attachment I); and
- 2) Directing the City Attorney to Develop an Impartial Analysis of the measure.

SUMMARY

The Utility Users Tax (UUT) was approved by Hayward voters as part of a special election in May of 2009 as a means of protecting critical City services in the wake of the devastating impacts of the Great Recession. The UUT is a 5.5% tax on the use of electricity, natural gas, telecommunications (including traditional telephone service, long distance service and cellular phone service), and video/cable television services. The tax was initially adopted with a ten-year sunset clause, meaning that the tax is set to expire in 2019, unless renewed by the voters. The action recommended in this report would place a measure on the June 2016 ballot to renew the UUT at its current rate for a period of twenty years, beginning after the sunset of the current tax (Measure A) and expiring in 2039.

BACKGROUND

The Utility Users Tax (UUT) was approved by Hayward voters as part of a special election in May of 2009 as a means of protecting critical city services in the wake of the devastating impacts of the Great Recession. The UUT is a 5.5% tax on the use of electricity, natural gas, telecommunications (including traditional telephone service, long distance service and cellular phone service), and video/cable television services. The tax was initially adopted with a ten-year sunset clause, meaning that the tax is

set to expire in 2019, unless renewed by the voters.

The UUT currently generates about \$16 million per year and is now the City's third largest General Fund revenue source behind property and sales taxes. About 75% of the revenue (roughly \$12 million) is allocated to public safety operations (police and fire). The remaining \$4 million generated by the UUT funds other City programs such as streets and roads maintenance, library services and economic development programs. Even with an improving economy in recent years, revenues have lagged behind the increasing demand for services and their rising cost. The City has walked a tightrope, dramatically reducing its budget while maintaining high levels of service. At the same time, employees from all bargaining groups have shouldered more of the cost of their benefits as the City has adjusted its compensation structure. Even with these efforts, without the critical revenue provided by the UUT, the City would have had no choice but to enact severe cuts to critical services like police and fire in order to maintain fiscal stability and a balanced budget.

In the summer of 2015, staff began discussing the renewal of the City's UUT. The UUT was originally adopted during a special election for the City. The City is pursuing renewal of the UUT at this point so that the matter can be placed on the ballot during a regular election held by the City. Should Council decide to seek renewal of the UUT at this time, staff is recommending that it be put on the ballot for the upcoming regular municipal election in June so that if that renewal effort is unsuccessful, there will be an opportunity for two additional years of outreach and engagement with the Hayward community about the critical need for this revenue source before the last possible renewal point in June 2018.

At the January 26, 2016 City Council meeting, the Council received the results from preliminary polling done last fall and confirmed the recommendation of the Budget & Finance Committee to proceed with outreach efforts around a renewal of the 5.5% UUT measure for either ten or twenty years (see staff report here:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=2555232&GUID=6B112550-623A-434B-A3AF-281484E67165>).

At the February 23, 2016 City Council meeting, the Council received the results of polling done at the end of February and reviewed the community outreach around the renewal of the measure (see staff report here:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=2575580&GUID=4497DE09-188A-4D95-BE92-74D8BC9FE351>). The Council asked staff to return with the actions necessary to place renewal of the measure with a twenty-year sunset on the June 2016 ballot.

DISCUSSION

Based on the feedback received in the outreach process conducted to date, balanced with the projected financial needs of the organization to sustain at least the current essential service levels, staff recommends that Council approves the attached Resolution seeking voter approval for renewing the UUT during the June 2016 election. If the measure is approved, implementation of the UUT Ordinance would continue (Exhibit A of Attachment I) and include the following provisions:

- 1) Maintains the current UUT tax rate at 5.5%.
- 2) Applies UUT tax to gas, electric, video services, and telecommunications (e.g., wired and wireless

telephone), regardless of the technological or market method of delivery; and does not apply it to water, sewer, or garbage.

- 3) Includes an exemption or rebate for low income households and taxpayers, which applies to households or individuals (depending on the specific utility) at or below 50% Area Median income (AMI) and/or already eligible for utility Lifeline Service. This exemption will be administered consistent with already existing processes within the City (e.g., as currently applied to water customers); or by the utility collecting the tax contingent upon the customer being qualified for Lifeline Service according to the criteria of each specific utility provider.
- 4) Provides for a twenty-year sunset provision such that the UUT tax ends in twenty years unless reenacted by the voters (i.e., sunset would be June 30, 2039, unless re-enacted in a regular election in 2038 or before.).

If Council chooses to go forward with the renewal of the UUT, the following is the suggested ballot language for Council's adoption as reflected in the approving Resolution (Attachment I):

“To maintain City of Hayward services including: neighborhood police patrols, fire stations and 911, firefighter, paramedic response times; preserving youth and anti-gang programs; emergency and disaster preparedness; and city streets, sidewalks and lighting; shall the City of Hayward renew the existing Utility Users Tax at the current rate of 5.5 percent on gas, electricity, video and telecommunications services, providing \$16 million annually for 20 years from the current end date, with exemptions for low-income lifeline users; and all money used for City of Hayward services?”

Additional Considerations About the UUT -- As of July 2015, there were 158 cities and four counties levying UUTs, covering 50% of California's total population. The average UUT tax rate in the State is 5.4%, with rates ranging from 1% to 11%.

ECONOMIC AND FISCAL IMPACT

The current proposal would maintain the budget priorities and service provision goals of the City and Council. Renewing the UUT for twenty years will preserve the quality of City services, including firefighters, paramedics, fire stations, and neighborhood police patrols, emergency response times, youth /anti-gang programs, disaster preparedness initiatives, and economic development services. However, the loss of the UUT revenue would have significant and immediate impacts on critical services for residents resulting in across the board cuts to City services and staffing levels, including in public safety.

As mentioned earlier in this report, the UUT currently generates about \$16 million per year and is now the City's third largest General Fund revenue source behind property and sales taxes. About 75% of the revenue (roughly \$12 million) is allocated to public safety operations (police and fire). The remaining \$4 million generated funds other City programs such as streets and roads maintenance, library services and economic development programs.

Based on recent information from the County Registrar of Voters, the City could spend approximately \$200,000 for an election held during the regular municipal election cycle (June 2016). As this is a year for our regular municipal elections, the City Clerk has already included this cost in the FY 2016 budget. If

the City chose to pursue a stand-alone election date (a date when there are no other elections and the municipality would bear the costs), that cost could possibly double unless the decision was made to utilize a mail-in ballot process.

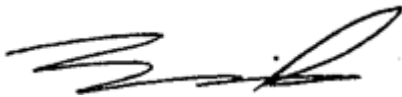
PUBLIC CONTACT

Throughout the year and particularly over the last two months, the City has engaged in extensive public outreach to determine if our community generally believes the City has honored the commitments made in seeking voter approval of the initial UUT; and to determine if the voting community supports the potential renewal of the UUT. This positive outreach was presented to Council in previous staff reports on January 26 and February 23, 2016 as noted above..

NEXT STEPS

If Council chooses to adopt the attached resolution approving the submission of a UUT Tax Renewal Measure to the voters of Hayward for the June 2016 Election, the City Clerk and City Attorney will prepare the appropriate paperwork for submission of the measure to the County.

Prepared by: John Stefanski, Management Analyst
Recommended by: Kelly McAdoo, Assistant City Manager
Approved by:



Fran David, City Manager

Attachments:

Attachment I	Resolution Exhibit A to Attachment I: UUT Ordinance (Article 18 Hayward Municipal Code)
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HAYWARD CITY COUNCIL

RESOLUTION NO. 16-

Introduced by Council Member _____

RESOLUTION OF THE CITY OF HAYWARD ESTABLISHING JUNE 7, 2016, AS THE DATE FOR AN ELECTION ON A PROPOSED BALLOT MEASURE SEEKING VOTER APPROVAL RELATING TO THE RENEWAL OF THE UTILITY USERS TAX FOR TWENTY YEARS AND REQUESTING THE BOARD OF SUPERVISORS OF ALAMEDA COUNTY TO CONSOLIDATE SAID ELECTION WITH THE PRESIDENTIAL DIRECT PRIMARY ELECTION; AND AUTHORIZING CERTAIN OTHER ELECTION ACTIVITIES

WHEREAS, the voters of the City of Hayward approved a 5.5% Utility Users Tax (UUT) in May 2009; and

WHEREAS, the current UUT will expire on June 30, 2019; and

WHEREAS, at its March 1, 2016 meeting, the City Council recognized the need to renew the UUT to maintain and preserve the level of services the residents of the City expect; and

WHEREAS, at that meeting, the City Council concluded that all of the information presented indicated that, to maintain and preserve current essential service levels, the Council should call an election to ask the voters of the City to approve a twenty-year renewal of the UUT, the revenue from which would be used to support general municipal services; and

WHEREAS, on the basis of the forgoing, the City Council determined that it is appropriate to submit a ballot measure regarding a twenty-year renewal of the UUT to the voters of the City of Hayward for their approval and adoption at the general municipal election to be held in the City on June 7, 2016; and

WHEREAS, the Hayward City Council is authorized by California Elections Code Section 9222 to place such measure before the voters; and

WHEREAS, Elections Code Sections 9281 through 9287 set forth the procedures for arguments in favor of and in opposition to any City ballot measure; and

WHEREAS, June 7, 2016 is the date of the City's general municipal election to be consolidated with the Presidential Primary Election and it is desirable that the election on the City's ballot measure be consolidated with the Presidential Primary Election to be held on

the same date; that within the City, the precincts, polling places and election officers of the two elections be the same, and that the Alameda County Department of Elections canvass the returns of the consolidated election and that the election be held in all respects as if there were only one election; and

WHEREAS, based on all the information presented at the March 1, 2016 meeting, both written and oral, including the staff reports, minutes, and other relevant materials, the City Council finds that under CEQA Guidelines 15060(c)(2) and 15378, subdivisions (2) and (4) of subdivision (b), this tax does not constitute a project under CEQA and therefore review under CEQA is not required.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward takes the following actions:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated by reference.
2. Call Election: Placement of Measure on the Ballot. Pursuant to California Constitution Article XIIC, Section 2; Government Code Section 53724; and Elections Code Section 9222, the City Council of the City of Hayward hereby calls an election at which it shall submit to the qualified voters for the City, a measure that, if approved, would adopt a 20 year renewal of the 5.5% Utility Users Tax or until June 30, 2039. This measure shall be designated by letter by the Alameda County Registrar of Voters. Pursuant to Election Code Section 10400 et seq., the election for this measure shall be consolidated with the established election to be conducted on June 7, 2016.
3. Ballot Language. The question to be presented to the voters is as follows:

To maintain City of Hayward services including: neighborhood police patrols, fire stations and 911, firefighter, paramedic response times; preserving youth and anti-gang programs; emergency and disaster preparedness; and city streets, sidewalks and lighting; shall the City of Hayward renew the existing Utility Users Tax at the current rate of 5.5 percent on gas, electricity, video and telecommunications services, providing \$16 million annually for 20 years from the current end date, with exemptions for low-income lifeline users; and all money used for City of Hayward services?	YES
	NO

4. Proposed Ordinance. The ordinance authorizing the general tax to be approved by the voters pursuant to Sections 2 and 3 of the Resolution is as set forth in Exhibit A hereto. The City Council hereby approves the ordinance, the form thereof, and its submission to the voters of the City at the June 7, 2016 election, as required by Revenue and Taxation Code Section 7285.9, subject to the

- approval of a majority of the voters voting on the measure at the election called by the adoption of this resolution. The entire text of the ordinance, attached hereto as Exhibit A, shall be included in the voters pamphlet. The ordinance specifies that the rate of the Utility Users Tax shall be at the rate of five and one half percent (5.5%) of the gross receipts made for gas, electricity, video, and telecommunication services and shall be collected from the service user by the services supplier/provider.
5. Publication of Measure. The City Clerk is hereby directed to cause notice of the measure to be published once in the official newspaper of the City of Hayward, in accordance with Section 12111 of Elections Code and Section 6061 of the Government Code.
 6. Request to Consolidate and Conduct Election and Canvass Returns.
 - a. Pursuant to the requirement of Section 1403 of the Elections Code, the Board of Supervisors of the County of Alameda is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Presidential Primary Election on Tuesday June 7, 2016, for the purpose of placing the measure set forth in Sections 3 and 4 on the ballot.
 - b. The County of Alameda Registrar of Voters is authorized to canvass the returns of the municipal election. The Election shall be held in all respect as if there were only one election, and only one form of ballot shall be used.
 - c. The Board of Supervisors is requested to issue instructions to the Alameda County Registrar of Voters to take any and all steps necessary for the holding of the consolidated election.
 - d. The City of Hayward recognizes that additional costs will be incurred by the County of Alameda by reason of this consolidation and agrees to reimburse the County for any costs.
 7. Submission of Ballot Argument and Impartial Analysis.
 - a. The last day for submission of direct arguments for or against the measure shall be by 5:00PM on March 8, 2016.
 - b. Direct arguments shall not exceed three hundred (300) words and shall be signed by not more than five persons.
 - c. The last day for submission of rebuttal arguments for or against the measure shall be by 5:00PM on March 18, 2016. Rebuttal arguments shall not exceed 250 words and shall be signed by not more than five persons.
 - d. The City Attorney and City Clerk are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the June 7, 2016 election and appropriate all monies necessary, consistent with the law.
 8. Effective Date. This Resolution shall become effective immediately upon its adoption and the City Clerk is directed to send certified copies of the Resolution to the Alameda County Board of Supervisors and the Alameda County Registrar of Voters.

9. CEQA. The approval of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the City would undertake the required CEQA review for that particular project. Therefore, under CEQA Guidelines section 15060, review under CEQA is not required.

IN COUNCIL, HAYWARD, CALIFORNIA March 1, 2016

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

ARTICLE 18

UTILITY USERS TAX

<u>Section</u>	<u>Subject Matter</u>
8-18.10	SHORT TITLE
8-18.20	DEFINITIONS
8-18.30	CONSTITUTIONAL, STATUTORY, AND OTHER EXEMPTIONS
8-18.40	LOW INCOME AND LIFELINE EXEMPTIONS
8-18.50	TELECOMMUNICATION USERS TAX
8-18.60	VIDEO USERS TAX
8-18.70	ELECTRICITY USERS TAX
8-18.80	GAS USERS TAX
8-18.90	COLLECTION OF TAX FROM SERVICE USERS RECEIVING DIRECT PURCHASE OF GAS OR ELECTRICITY
8-18.100	BUNDLING TAXABLE ITEMS WITH NON-TAXABLE ITEMS
8-18.110	SUBSTANTIAL NEXUS/MINIMUM CONTACTS
8-18.120	DUTY TO COLLECT - PROCEDURES
8-18.130	COLLECTIONS PENALTIES - SERVICE SUPPLIERS
8-18.140	ACTIONS TO COLLECT
8-18.150	DEFICIENCY DETERMINATION AND ASSESSMENT-TAX APPLICATION ERRORS
8-18.160	ADMINISTRATIVE REMEDY - NON-PAYING SERVICE USERS
8-18.170	ADDITIONAL POWERS AND DUTIES OF THE TAX ADMINISTRATOR

<u>Section</u>	<u>Subject Matter</u>
8-18.180	RECORDS
8-18.190	REFUNDS
8-18.200	APPEALS
8-18.210	NO INJUNCTION/WRIT OF MANDATE
8-18.220	NOTICE OF CHANGES TO ORDINANCE
8-18.230	EFFECT OF STATE AND FEDERAL REFERENCE /AUTHORIZATION
8-18.240	INDEPENDENT AUDIT OF TAX COLLECTION, EXEMPTION, REMITTANCE, AND EXPENDITURE
8-18.250	REMEDIES CUMULATIVE
8-18.260	TERMINATION OF UTILITY USERS TAX

ARTICLE 18

UTILITY USERS TAX

SEC. 8-18.10 SHORT TITLE. This Article shall be known as the “Utility Users Tax Ordinance” of the City of Hayward.

SEC. 8-18.20 DEFINITIONS. The following words and phrases whenever used in this Article shall be construed as defined in this Section.

(a) “Ancillary Telecommunication Services” means services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to, the following services:

(1) “Conference Bridging Service” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(2) “Detailed telecommunications billing service” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

(3) “Directory Assistance” means an ancillary service of providing telephone number information, and/or address information.

(4) “Vertical Service” means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(5) “Voice Mail Service” means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(b) “Ancillary Video Services” means services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, recording services, interactive services or other communications services that are associated with or incidental to the provision, use or enjoyment of video services.

(c) “Billing Address” shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

(d) “City” shall mean the City of Hayward.

(e) “Gas” shall mean natural or manufactured gas or any alternate fuel which may be substituted therefore currently or in the future.

(f) “Mobile Telecommunications Service” has the meaning and usage as set forth in the

Mobile Telecommunications Sourcing Act (4 U.S.C.A. Section 124) and the regulations thereunder.

(g) "Month" shall mean calendar month.

(h) "Non-Utility Service Supplier" means:

(1) A service supplier, other than a supplier of electric distribution service to all or a significant portion of the City, which generates electricity for sale to others, and shall include, but is not limited to, any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator, (15 U.S.C.A. Section 79Z-5a), municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity; or

(2) An electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; or

(3) A gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to gas users within the City.

(i) "Paging Service" means a "telecommunications service" that provides transmission of coded radio signals for the purpose of activating specific pagers or similar reception devices, whether such transmissions include message and/or sounds.

(j) "Person" shall mean without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation, (including foreign, domestic, and non-profit), municipal district or municipal corporation (other than the City), cooperative, or receiver, trustee, guardian, or other representative appointed by order of any court, or any other entity.

(k) "Place of Primary Use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, whether the residential street address or the primary business street address of the customer.

(l) "Post-paid Telecommunication Service" means the telecommunication service obtained by making a payment on a telecommunication-by-telecommunication basis whether through the use of a credit card or any other payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

(m) "Prepaid Telecommunication Service" means the right to access telecommunication services, which must be paid for in advance and which enables the origination of telecommunications services and that is sold in predetermined units or dollars of which the number declines with use.

(n) "Private Telecommunication Service" means a telecommunication service that entitles the customer to exclusive or priority use of a telecommunications channel or limited group

of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(o) “Service Address” shall mean the residential street address or the business street address of the service user. For a telecommunication or video service user, “service address” means either:

(1) The location of the service user’s telecommunication or video equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or

(2) If the location in subsection (1) of the definition is unknown or mobile (e.g., mobile telecommunications service or VoIP service), the service address shall mean the location of the service user’s place of primary use; or

(3) For prepaid telecommunication service, “service address” shall mean the location associated with the service number.

(p) “Service Supplier” shall mean any person and/or the City, that provides any service subject to any tax hereunder, including, without limitation, telecommunication, video, electric and/or, gas service, to a user of such service within the City.

(q) “Service User” shall mean a person required to pay a tax imposed under the provisions of this Article.

(r) “State” shall mean the State of California.

(s) “Streamlined Sales and Use Tax Agreement” shall mean the multi-state agreement commonly known and referred to the Streamlined Sales and Use Tax Agreement, and as it is amended from time to time.

(t) “Tax Administrator” means the Finance Director of the City or his or her designee.

(u) “Telecommunications Channel” is a physical or virtual path of telecommunications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the telecommunications).

(v) “Telecommunications Services” means the transmission, conveyance, or routing of voice, data, audio, video, or any other information of signals to a point, or between or among points, whatever the technology used. The term “telecommunications services” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing, without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Telecommunications Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with “telecommunications services”. “Telecommunications services” include, but are not limited to, the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; mobile telecommunication service; prepaid

telecommunication services; post-paid telecommunications services; private telecommunication services; paging service; 800 service (or any other toll-free numbers designated by the Federal Telecommunication Commission); 900 service (or any other similar numbers designated by the Federal Telecommunications Commission for services whereby subscribers call in to pre-recorded or live service).

(w) "Video Programming" means those programming services commonly provided to subscribers by a "video service supplier", including, but not limited to, basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

(x) "Video Services" means "video programming" and any and all services related to the providing, recording, delivering, use or enjoyment of "video programming" (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video) using one or more channels by a "video service supplier", regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services, "telecommunications services", or interactive communication services that are functionally integrated with "video services".

(y) "Video Service Supplier" means any person, company, or service which provides or sells one or more channels, programs or individual episodes of video programming, or provides or sells the capability to receive one or more channels, programs or individual episodes of video programming, including any telecommunications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or telecommunications. A "video service supplier" includes, but is not limited to, multichannel video programming distributors [as defined in 47 U.S.C.A. Section 522(13)]; open video systems (OVS) suppliers; and suppliers of cable television or video program delivery of any kind, be it through channel or other subscribers or to individual buyers of programs or unique episodes; master antenna television; satellite master antenna television; multichannel multipoint distribution services (MMDS); video services using internet protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand), direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.

(z) VoIP (voice over internet protocol) means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

(aa) "800 Service" means "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling and includes any subsequent numbers or other designations designated by the Federal Communications Commission for toll free telecommunications services.

(bb) "900 Service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded

announcement or a live service. "900 Service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and includes any subsequent numbers or other designations designated by the Federal Communications Commission for pay for services calls.

SEC. 8.18-30 CONSTITUTIONAL, STATUTORY AND OTHER EXEMPTIONS.

(a) Nothing in this Article shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a federal or state statute, the Constitution of the United States or the Constitution of the State.

(b) Any service user that is exempt from the tax imposed by this Article pursuant to subsection (a) of this Section shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision with a commonly recognized name for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all utility service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in utility service suppliers so that the Tax Administrator can properly notify the new utility service supplier of the service user's tax exempt status. A service user that fails to comply with this Section shall not be entitled to a refund of utility user's taxes collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

The decision of the Tax Administrator may be appealed pursuant to Section 8-18.200 of this Article. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 8-18.200 of this Article is a prerequisite to a suit thereon.

SEC. 8-18.40 LOW INCOME AND LIFELINE EXEMPTION.

(a) Each household within the City, in respect to which the annual income of such household is less than fifty percent (50%) of the median family income for the County of Alameda, as most recently established by the United States Department of Housing and Urban Development, is and shall be exempt from each and all of the taxes imposed by this Article upon presentation to the Tax Administrator of a written request for such exemption and reasonable proof of qualification for the exemption.

(b) Any service user who is enrolled in the California Public Utilities Commission's Lifeline Telephone Program, also known as Universal Lifeline Telephone Service (ULTS), is and shall be exempt from the tax imposed for telecommunication services under Section 8-18.50 of this Article, upon presentation to the Tax Administrator of written confirmation of enrollment in the Lifeline/ULTS program. The service user seeking the exemption under this subsection must reside at the location receiving the service. The exemption shall not apply to any nonresidential service location.

(c) The Tax Administrator shall, within 60 days of receipt of an application for exemption, determine whether the exemption is granted, and if so, notify the service supplier. The exemption shall apply from the date of the Tax Administrator's determination that the household

qualifies.

(d) The exemption granted to a person pursuant to this Section shall become effective on the beginning of the first regular billing period which commences after the Tax Administrator has notified the service supplier that an exemption has been granted. Upon a showing of hardship by a service supplier, including the City, the Tax Administrator may, as an alternative, implement this Section 8-18.40 by requiring the exempt person to pay the tax and seek a refund under Section 8-18.190. The Tax Administrator shall provide a refund claim form for this purpose.

(e) The Tax Administrator, in his or her sole discretion, may require annual written verification from the service user of his or her continuing eligibility for any exemption granted under this Section.

SEC. 8-18.50 TELECOMMUNICATION USERS TAX.

(a) There is hereby imposed a tax upon every person in the City using telecommunication services. The tax imposed by this Section shall be at the rate of five and one-half percent (5.5%) of the charges made for such services and shall be collected from the service user by the telecommunication service supplier or its billing agent. There is a rebuttable presumption that telecommunication services which are billed to a billing or service address in the City, are used in whole or in part, within the City's boundaries, and such services are subject to taxation under this Article. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this Section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunication services.

(b) "Mobile Telecommunications Service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C.A. Section 124). The Tax Administrator may issue and disseminate to telecommunication service suppliers which are subject to the tax collection requirements of this Article, sourcing rules for the taxation of other telecommunication services, including, but not limited to, post-paid telecommunications services and prepaid telecommunication services consistent with federal and state constitutional provisions. In promulgating any sourcing rules hereunder, the Tax Administrator shall take into account, but shall not be legally bound by, custom and common practice that furthers administrative efficiency and minimizes taxation by more than one state of the same service usage, commonly referred to as multi-jurisdictional taxation. In doing so, the Tax Administrator may refer to and/or rely upon the Streamlined Sales and Use Tax Agreement, and/or any other reasonable precedent or resource.

(c) The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Article, an administrative ruling identifying those telecommunication services, or charges therefore, that are subject to the tax of subsection (a) above.

(d) As used in this Section, charges for telecommunication services included in calculation of the tax shall include, but are not limited to, charges for: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing, central office and custom calling features (including, but not limited to, call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services;

directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; and local number portability charges. “Telecommunications services” shall not include digital downloads that are not “ancillary telecommunications services”, such as books, music, ringtones, games and similar digital products.

(e) To prevent actual multi-jurisdictional taxation of the telecommunication services subject to tax under this Section, any service user, upon proof to the Tax Administrator that the service user has previously paid the same tax in another state or local jurisdiction on such telecommunication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or local jurisdiction; provided, however, the amount of credit shall not exceed the tax owed to the City under this Section.

(f) The tax on telecommunication services imposed by this Section shall be collected from the service user by the service supplier. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

SEC. 8.18-60 VIDEO USERS TAX.

(a) There is hereby imposed a tax upon every person in the City using video services. The tax imposed by this Section shall be at the rate of five and one-half percent (5.5 %) of the charges made for such services and shall be collected from the service user by the video service supplier or its billing agent. There is a rebuttable presumption that video services which are billed to a billing or service address in the City are used, in whole or in part, within the City’s boundaries, and such services are subject to taxation under this Article. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

(b) As used in this section, the term “charges” shall include, but is not limited to, charges for the following:

- (1) Regulatory fees and surcharges, franchise fees and access fees (PEG);
- (2) Initial installation of equipment necessary for provision and receipt of video services;
- (3) Late fees, collection fees, bad debt recoveries, and return check fees;
- (4) Activation fees, reactivation fees, and reconnection fees;
- (5) Video programming and video services;
- (6) Ancillary video programming services (e.g., electronic program guide services, search functions, recording functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of the video services);
- (7) Equipment leases (e.g., remote, recording and/or search devices; converters); and

- (8) Service calls, service protection plans, name changes, changes of services, and special services.

(c) As used in this Section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the video services.

(d) The Tax Administrator may issue and disseminate to video service suppliers, which are subject to the tax collection requirements of this Article, an administrative ruling identifying those video services, or charges therefore, that are subject to or not subject to the tax of subsection (a) above.

(e) The tax imposed by this Section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

SEC. 8-18.70 ELECTRICITY USERS TAX.

(a) There is hereby imposed a tax upon every person using electricity in the City. The tax imposed by this Section shall be at the rate of five and one-half percent (5.5 %) of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

(b) As used in this Section, the term “charges” shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term “charges” shall include, but is not limited to, the following charges:

- (1) Energy charges;
- (2) Distribution charges or transmission charges;
- (3) Metering charges;
- (4) Stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;
- (5) Customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear

decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees or surcharges which are necessary for or common to the receipt, use or enjoyment of electric service; and

- (6) Charges, fees, or surcharges for electricity services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) As used in this Section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity.

(d) The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefore, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

(e) As used in this Section, the term “using electricity” shall not include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.

(f) The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this Article shall be collected and remitted in the manner set forth in Section 8-18.90 of this Article. All other taxes on charges for electricity imposed by this Section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

SEC. 8-18.80 GAS USERS TAX.

(a) There is hereby imposed a tax upon every person using gas in the City, which is transported and delivered through a pipeline or by mobile transport. The tax imposed by this Section shall be at the rate of five and one-half percent (5.5 %) of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall

be collected from the service user by the service supplier or non-utility service supplier, or its billing agent, and shall apply to all uses of gas, including but not limited to, heating, electricity generation, and the use of gas as a component of a manufactured product.

(b) As used in this Section, the term “charges” shall apply to all services, components and items for gas service that are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term “charges” shall include, but is not limited to, the following charges:

- (1) The commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;
- (2) Gas transportation charges (including interstate charges to the extent not included in commodity charges);
- (3) Storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;
- (4) Capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary for or common to the receipt, use or enjoyment of gas service; and
- (5) Charges, fees, or surcharges for gas services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) As used in this Section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas.

(d) The Tax Administrator, from time to time, may survey the gas suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of

subsection (a) above.

(e) There shall be excluded from the calculation of the tax imposed in this Section, charges made for gas which is to be resold and delivered through a pipeline distribution system.

(f) The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this Article shall be collected and remitted in the manner set forth in Section 8-18.90 of this Article. All other taxes on charges for gas imposed by this Section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

SEC. 8-18.90 COLLECTION OF TAX FROM SERVICE USERS RECEIVING DIRECT PURCHASE OF GAS OR ELECTRICITY.

(a) Any service user subject to the tax imposed by Section 8-18.70 or by Section 8-18.80 of this Article, which produces gas or electricity for self-use; which receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this Article; or which, for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing agent on the use of gas or electricity in the City, including any related supplemental services, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use, based on the charges for, or value of, such gas or electricity, or supplemental services, as provided in subsection (b). In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator in writing, may be applied against any subsequent tax bill that becomes due.

(b) The Tax Administrator may require said service user to identify its non-utility service supplier, and otherwise provide, subject to audit: invoices; books of account; or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City. Rate schedules for this purpose shall be available from the City.

SEC. 8-18.100 BUNDLING TAXABLE ITEMS WITH NON-TAXABLE ITEMS.

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation of the taxable and non-taxable services.

SEC. 8-18.110 SUBSTANTIAL NEXUS/MINIMUM CONTACTS.

For purposes of imposing a tax or establishing a duty to collected and remit a tax under this Article, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunication service (including VoIP) used by a person with a service address in the City, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax or establishing a duty to collect and remit a tax, under this Article. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent, affiliate, or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the City or distributed from a location within the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of services that are subject to a tax under this Article.

SEC. 8-18.120 DUTY TO COLLECT - PROCEDURES.

(a) Collection By Service Suppliers. The duty of service suppliers to collect and remit the taxes imposed by the provisions of this Article shall be performed as follows:

- (1) The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed

on said charges, Section 8-18.160 shall apply.

- (2) The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this Article. Where a service user receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

(b) Filing Return and Payment. Each person required by this Article to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this Article. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the Public Records Act.

SEC. 8-18.130 COLLECTION PENALTIES-SERVICE SUPPLIERS

(a) Taxes collected by a service supplier from a service user are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection, shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on the following business day.

(b) If the person required to collect and/or remit the utility users tax fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen percent (15%) of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of 75/100ths percent (.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

(c) The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this Article for fraud or gross negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

(d) For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this Section shall become a part of the tax herein required to be paid.

(e) Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this Article to be consistent with any uniform standards or procedures that mutually agreed upon by other public agencies imposing a utility users tax, or otherwise legally

established, to create a central payment location or mechanism.

SEC. 8-18.140 ACTIONS TO COLLECT.

Any tax required to be paid by a service user under the provisions of this Article shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this Article shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this Article, along with any collection costs incurred by the City as a result of the person's noncompliance with this Article, including, but not limited to, reasonable attorneys' fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under 11 U.S.C.A. Section 507(a)(8)(C).

SEC. 8-18.150 DEFICIENCY DETERMINATION AND ASSESSMENT - TAX APPLICATION ERRORS.

(a) The Tax Administrator shall make a deficiency determination if he or she determines that any service supplier or service user required to pay, collect, and/or remit taxes pursuant to the provisions of this Article has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 8-18.150 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) The Tax Administrator shall mail a notice of such deficiency determination to the person or entity allegedly owing the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of 75/100ths percent (.75%) per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of mailing of such notice, the person or entity allegedly owing the tax may file a request in writing with the Tax Administrator for a hearing on the matter.

(c) If the person or entity allegedly owing the tax fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) calendar days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person or entity at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person or entity to produce specific records at such hearing, such notice may designate the records requested to be produced.

(d) At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of

such final assessment to person or entity owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 8-18.200 of this Article. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 8-18.200 of this Article is a prerequisite to a suit thereon.

(e) Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of 75/100ths percent (.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Article shall commence from the date of delinquency as provided in this subsection (e).

(f) All notices under this Section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

SEC. 8-18.160 ADMINISTRATIVE REMEDY - NON-PAYING SERVICE USERS.

(a) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this Article from certain named service users for specific billing periods. To the extent the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Article. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 8-18.160 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of 75/100ths percent (.75 %) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

(c) The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

(d) If the service user fails to remit the tax to the Tax Administrator within thirty (30) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of fifteen percent (15%) of the amount of the total tax that is owed.

SEC. 8-18.170 ADDITIONAL POWERS AND DUTIES OF THE TAX

ADMINISTRATOR.

- (a) The Tax Administrator shall have the power and duty to enforce each and all of the provisions of this Article.
- (b) The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this Article for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this Article shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Government Code Section 53750 or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of Government Code Section 53570, and the City does not waive or abrogate its ability to impose the utility users tax in full as a result of promulgating administrative rulings or entering into agreements.
- (c) Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this Article and thereby: (1) conform to the billing procedures of a particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purposes and scope of this Article; or, (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office and are voidable by the Tax Administrator or the City at any time.
- (d) The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Article, of any person required to collect and/or remit a tax pursuant to this Article. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 8-18.150 of this Article for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Article, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.
- (e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Article for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of 75/100ths percent (.75 %) per month, prorated for any portion thereof.
- (f) The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this Article.

(g) Notwithstanding any provision in this Article to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this Article if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedence.

SEC. 8-18.180 RECORDS.

(a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Article to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.

(b) The City, through the City Council, may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this Article, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the persons in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, meals, lodging and similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

(c) The Tax Administrator is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Section 7284.6 and 7284.7.

(d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

(e) If any person subject to record-keeping under this Section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of \$500 on such person for each day following: i) the initial date that the person refuses to provide such access; or, ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Article.

SEC. 8-18.190 REFUNDS.

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Article from a service user or service supplier, it may be refunded as provided in this Section:

(a) The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Article from a service user or service supplier, provided that no refund shall be paid under the provisions of this Section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim under penalty of perjury as provided by this subsection.

(b) The Tax Administrator, where the claim is within his or her settlement authority as established by ordinance or by resolution of the City Council from time to time, or the City Council where the claim is in excess of that amount, shall act upon the refund claim within forty-five (45) calendar days of the initial receipt of the refund claim. Said decision shall be final. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the forty-five (45) calendar day period, the claim shall be deemed to have been rejected by the Tax Administrator/City Council on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in Government Code Section 913.

(c) The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the City pursuant to this Section shall be subject to the provisions of Government Code Section 945.6 and 946.

(d) Notwithstanding the notice provisions of subsection (a) of this Section, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Article, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that: i) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; ii) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and iii) in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

(e) Notwithstanding subsections (a) through (d) above, a service supplier shall be entitled to take any overpayment as a credit against an underpayment whenever such overpayment has been received by the City within the three (3) years next preceding a deficiency determination or assessment by the Tax Administrator in connection with an audit instituted by the Tax Administrator pursuant to Section 8-18.170. A service supplier shall not be entitled to said credit unless it first clearly establishes, to the satisfaction of the Tax Administrator, the right to the credit by written records showing entitlement thereto. Under no circumstances shall an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a service supplier for a refund to which it would not otherwise be entitled under the one-year written claim requirement of this Section.

SEC. 8-18.200 APPEALS.

(a) The provisions of this Section apply to any decision (other than a decision relating to a refund pursuant to Section 8-18.190 of this Article), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 8-18.190 of this Article), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this Section. Compliance with this Section shall be a prerequisite to a suit thereon. [See Government Code Section 935(b)]. Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

(b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 8-18.190 of this Article), deficiency determination, assessment, or administrative ruling of the Tax Administrator he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within fourteen (14) calendar days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

(c) The matter shall be scheduled for hearing before an independent hearing officer selected by the City Manager, no more than thirty (30) calendar days from the receipt of the appeal. The appellant shall be mailed notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

(d) Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) calendar days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) calendar days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6.

(e) All notices under this Section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

SEC- 8.18.210 NO INJUNCTION/ WRIT OF MANDATE.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Article of any tax or any amount of tax required to be collected and/or remitted.

SEC. 8-18.220 NOTICE OF CHANGES TO ORDINANCE.

If a tax under this Article is added repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of California Public Utilities Code Section 799.

SEC. 8-18.230 EFFECT OF STATE AND FEDERAL REFERENCE/AUTHORIZATION.

Unless specifically provided otherwise, any reference to a state or federal statute in this Article shall mean such statute as is may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, repeal thereof, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (as a result of excluding all or a part of a utility service, or charge therefor, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, the provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this Article is expanded or limited as a result of changes in state or federal law, no amendment or modification of this Article shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this Article.

SEC. 8-18.240 INDEPENDENT AUDIT OF TAX COLLECTION, EXEMPTION, REMITTANCE, AND EXPENDITURE.

The City shall annually verify that the taxes owed under this Article have been properly applied, exempted, collected, and remitted in accordance with the Article, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

SEC. 8-18.250 REMEDIES CUMULATIVE.

All remedies and penalties prescribed by this Article or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Article.

SEC. 8-18.260 TERMINATION OF UTILITY USER TAX.

The levy of taxes as provided in this Article shall expire on June 30, 2019, unless re-enacted by a separate ordinance of the City Council following a majority vote of the electorate. The termination of the levy of taxes as provided herein shall not terminate the obligation to pay taxes levied on services used prior to such date. Taxes levied prior to June 30, 2019, shall remain a debt payable to the City. All provisions of this Article, except those relating to the levy of taxes, shall continue in full force and effect after such date.